Massachusetts Bar Association

Vol. V.

FIFTH ANNUAL REPORT

OF THE

Massachusetts Bar Association

CONTAINING

THE CHARTER AND BY-LAWS, A LIST OF OFFICERS AND MEMBERS AND THE PROCEEDINGS AT THE FIFTH ANNUAL MEETING.

VOLUME V.

BOSTON:
THE ROCKWELL & CHURCHILL PRESS.
1915.

TABLE OF CONTENTS.

Massachusetts Bar Association.

OFFICERS, 1915.

President.

HERBERT PARKER.

Vice-Presidents.

WILLIAM H. BROOKS. SAMUEL K. HAMILTON.
JAMES E. COTTER. ROBERT O. HARRIS.
JOSEPH B. WARNER.

Secretary.

JAMES A. LOWELL.

Treasurer.

CHARLES H. BECKWITH.

Executive Committee.

Moorfield Storey.	Gardner K. Hudson.
Charles Neal Barney.	James F. Jackson.
William A. Burns.	Melvin M. Johnson.
James B. Carroll.	Thomas J. Kenny.
Henry V. Cunningham.	Henry C. Mulligan.
William A. Davenport.	Oliver Prescott.
Frank F. Dresser.	John H. Schoonmaker.
David A. Ellis.	Ezra R. Thayer.
Frederick B. Greenhalge.	Charles E. Ware.
Frederick S. Hall.	John J. Winn.
Robert Homans.	Sidney R. Wrightington.

COMMITTEES OF THE MASSACHUSETTS BAR ASSOCIATION FOR THE YEAR 1915.

Committee on Membership.

Robert Homans, *Chairman*	Boston.
Frank M. Forbush, *Secretary*	Boston.
Charles N. Barney	Lynn.
Charles K. Darling	Concord.
Michael L. Eisner	Pittsfield.
J. B. Ferber	Boston.
Fred T. Field	Boston.
Hon. Frederic A. Fisher	Lowell.
William C. Mellish	Worcester.
William C. Parker	New Bedford.
James A. Stiles	Gardner.

Committee on Legislation.

David A. Ellis, *Chairman*	Boston.
Frank W. Grinnell, *Secretary*	Boston.
Elisha Brewster	Springfield.
Robert P. Clapp	Boston.
George T. Dewey	Worcester.
George A. Flynn	Boston.
John E. Hannigan	Cambridge.
Albert S. Howard	Lowell.
Arthur Lord	Plymouth.
Henry T. Lummus	Lynn.
Joseph F. O'Connell	Boston.
Amos T. Saunders	Clinton.
Jeremiah Smith, Jr.	Cambridge.
James M. Swift	Fall River.
William G. Thompson	Newton.

Committee on Legal Education.

Hollis R. Bailey, *Chairman*	Cambridge.
Samuel C. Bennett	Weston.
Charles W. Clifford	New Bedford.
Ezra R. Thayer	Cambridge.
William C. Wait	Medford.

Committee on Judicial Appointments.

HENRY WHEELER, *Chairman*	Boston.
JAMES E. COTTER	Boston.
WALTER COULSON	Lawrence.
JAMES P. DORAN	New Bedford.
JAMES R. DUNBAR	Boston.
FREDERICK L. GREENE	Greenfield
WILLIAM G. MCKECHNIE	Springfield.
RALPH A. STEWART	Brookline.
ERNEST H. VAUGHAN	Worcester.

Committee on Grievances.

L. ELMER WOOD, *Chairman*	Fall River.
ELIAS S. BISHOP, *Secretary*	Newton.
CLIFFORD S. ANDERSON	Worcester.
GEORGE R. BLINN	Bedford.
H. ASHLEY BOWEN	Lynn.
ROBERT G. DODGE	Newburyport.
JAMES L. DOHERTY	Springfield.
WILLIAM H. DUNBAR	Cambridge.
FRANKLIN T. HAMMOND	Cambridge.
JAMES E. MCCONNELL	Boston.
RICHARD W. NUTTER	Brockton.
STANLEY E. QUA	Lowell.
CHARLES E. SHATTUCK	Winchester.
WILLIAM B. SULLIVAN	Danvers.
JOSEPH WIGGIN	Malden.

[In 1911 the Massachusetts Bar Association, which had been organized as a voluntary association, was incorporated.]

CHARTER.

The Commonwealth of Massachusetts.

Be it known that whereas ALFRED HEMENWAY, CHARLES E. WARE, ROBERT HOMANS, WILLIAM H. NILES, ROBERT A. KNIGHT, WILLIAM H. DUNBAR, HOLLIS R. BAILEY, LEE M. FRIEDMAN, FREDERICK N. WIER, PAUL R. BLACKMUR, T. HOVEY GAGE, HENRY H. BAKER, ROBERT G. DODGE, JAMES R. DUNBAR, JAMES H. VAHEY, PATRICK M. KEATING, JAMES M. SWIFT, JOSEPH B. WARNER, JAMES E. COTTER, SAMUEL K. HAMILTON, HERBERT PARKER, ALDEN P. WHITE, JOHN C. HAMMOND, WILLIAM H. BROOKS, CHARLES E. HIBBARD, RICHARD W. IRWIN and FREDERICK L. GREENE have associated themselves with the intention of forming a corporation under the name of the

MASSACHUSETTS BAR ASSOCIATION,

for the purpose of cultivating the science of jurisprudence, of promoting reform in the law, of facilitating the administration of justice, of furthering uniformity of legislation throughout the Union, of upholding the honor of the profession of law, and encouraging cordial intercourse among the members of the Massachusetts Bar; and have complied with the provisions of the statutes of this Commonwealth in such case made and provided, as appears from the certificate of the President, Treasurer, Clerk or Secretary, and Executive Committee of said corporation, duly approved by the Commissioner of Corporations and recorded in this office:

Now, Therefore, I, ALBERT P. LANGTRY, Secretary of the Commonwealth of Massachusetts, Do Hereby Certify that said ALFRED HEMENWAY, CHARLES E. WARE, ROBERT HOMANS, WILLIAM H. NILES, ROBERT A. KNIGHT, WILLIAM H. DUNBAR, HOLLIS R. BAILEY, LEE M. FRIEDMAN, FREDERICK N. WIER, PAUL R. BLACKMUR, T. HOVEY GAGE, HENRY H. BAKER, ROBERT G. DODGE, JAMES R. DUNBAR, JAMES H. VAHEY, PATRICK M. KEATING, JAMES M. SWIFT, JOSEPH B. WARNER, JAMES E. COTTER, SAMUEL K. HAMILTON, HERBERT PARKER, ALDEN P. WHITE, JOHN C. HAMMOND, WILLIAM H. BROOKS, CHARLES E. HIBBARD, RICHARD W. IRWIN and FREDERICK L. GREENE, their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of the

MASSACHUSETTS BAR ASSOCIATION,

with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by law appertain thereto.

Seal

Witness my official signature hereunto subscribed, and the Great Seal of the Commonwealth of Massachusetts hereunto affixed, this twenty-first day of June in the year of our Lord one thousand nine hundred and eleven.

ALBERT P. LANGTRY,

Secretary of the Commonwealth.

BY-LAWS.

I. — *Membership.*

The present members of the Association are hereby made and declared to be members of the Association as a corporate body, and shall be enrolled as such by the Secretary.

Such membership shall continue until death, expulsion for non-payment of dues or otherwise, or resignation in writing signed by the member and sent to the Secretary or Treasurer.

Any member of the legal profession in good standing, practising in the Commonwealth of Massachusetts, who shall have been at the Bar of this State at least five years, may become a member by vote of the Association (or of the Executive Committee), upon recommendation of the Committee on Membership, and upon paying the annual dues of the current year within the period limited herein.

The Judges of the United States Courts residing in this State, the Justices of the Supreme Judicial Court, the Justices of the Superior Court and the Judges of the Land Court shall, during their respective terms of office, be honorary members of this Association, and exempt from dues.

Other honorary members may be elected by the Association.

Candidates for membership must be proposed in writing by two members of the Association. Nominations shall be sent to the Secretary, and by him referred to the Committee on Membership. This Committee shall report to the Executive Committee or to the Association the names of all candidates recommended for membership. Five negative votes in the Executive Committee, or fifteen negative votes in the Association, shall suffice to defeat an election.

II. — *Officers.*

The officers of the Association shall be a President, three or more Vice-Presidents, a Secretary, a Treasurer, and an Executive Committee, which shall consist of the President, the last ex-Presi-

dent, the Secretary, and the Treasurer, all of whom shall be *ex officio* members, together with twenty-one other members to be chosen by the Association.

No member shall be eligible for the office of President for more than one year in succession. No member shall be eligible for election to the Executive Committee, or appointment to any other standing Committee, for more than three years in succession. The President shall be chairman of the Executive Committee. There shall be upon the Executive Committee one member at least representing each county.

There shall be the following standing committees appointed annually by the President:

Committee on Membership.
Committee on Legislation.
Committee on Legal Education.
Committee on Judicial Appointments.
Committee on Grievances.
Committee on Nominations.

Special committees may be appointed by the President on vote of the Executive Committee.

III. — *President.*

The President, or, in his absence, one of the Vice-Presidents, shall preside at all meetings of the Association. He shall appoint all standing committees except the Executive Committee within thirty days after the Annual Meeting and shall fill all vacancies.

IV. — *Executive Committee.*

This Committee shall manage the affairs of the Association, subject to the provisions of the Constitution and By-Laws, and shall have all the powers of directors.

V. — *Treasurer.*

The Treasurer shall collect and, by order of the Executive Committee, disburse the moneys of the Association, and shall keep proper books of account, make reports at the Annual Meeting of the Association, or from time to time to the Executive Committee, if so required, and discharge such other duties as shall be required of him by the Association or the Executive Committee.

He shall, at the expense of the Association, give a surety

company bond for the proper performance of his duties in such sum and in such form as shall be required by the Executive Committee.

The Treasurer's report shall be audited annually, before its presentation to the Association, by two members of the Executive Committee, appointed by the President.

VI. — *Secretary.*

The Secretary shall keep a record of the proceedings of the Association, and notify officers and members of committees of their election or appointment; shall issue notices of all meetings, and keep the seal of the Association, and discharge such other duties as shall be required of him by the Association, or by the Executive Committee. The Secretary shall have all the powers of a Clerk.

VII. — *Committee on Membership.*

The Committee shall consist of eleven members. They shall consider and pass upon all nominations for membership and shall report thereon to the Executive Committee or to the Association.

VIII. — *Committee on Legislation.*

The Committee shall consist of fifteen members. It shall be the duty of this Committee to consider and report to the Association, or to the Executive Committee, such amendments of the law as in its opinion should be adopted; also to scrutinize proposed changes of the law, and, when necessary, report upon the same; also to observe the practical working of the judicial system of the State, and recommend, by written or printed report, from time to time, any changes therein which observation or experience may suggest, and, when authorized by the Association or the Executive Committee, appear before the Legislature or its committees in behalf of the Association, to introduce, advocate, or oppose proposed legislation.

This Committee shall also consider all matters pertaining to uniformity of legislation and shall co-operate with the Commissioners on Uniform Legislation and others to procure the enactment of uniform legislation throughout the United States.

They shall make a report at the Annual Meeting of the Association on all matters of importance pertaining to legislation and law reform.

IX. — *Committee on Legal Education.*

The Committee shall consist of five members. It shall be the duty of this Committee to consider and report matters pertaining to legal education and admission to the Bar, so that a high standard of legal attainment and character in the profession may be encouraged.

X. — *Committee on Judicial Appointments.*

The Committee shall consist of nine members. It shall be the duty of this Committee to further in all proper ways the appointment of suitable men to judicial office, to the end that the office of Judge may be rendered one of dignity and respect, with proper emolument, and that lawyers of high character, sound learning, wide experience, and judicial temperament may be placed upon the Bench.

XI. — *Committee on Grievances.*

The Committee shall consist of fifteen members This Committee may receive and hear all complaints preferred against any member of the Bar for misconduct in his profession, provided the same be in writing, plainly and specifically stating the matter complained of, and subscribed by the complainant, and may in its discretion investigate misconduct in his profession of a member of the Bar of which no formal complaint has been made; and with the approval of the Executive Committee it shall take such action thereon in the name of the Association as may be deemed proper.

It shall have like power in the matter of expelling any member of the Association.

XII. — *Committee on Nominations.*

The Committee shall consist of nine members. The Committee shall meet not less than thirty days before the Annual Meeting, and shall nominate at the Annual Meeting a President, Vice-Presidents, Secretary, Treasurer, and Executive Committee. They shall notify the Secretary of such nominations, so that the notice of the Annual Meeting may contain a list of such nominations.

Other nominations in writing may in like manner be made for any of such offices by not less than nine members of the Association.

XIII. — *Meetings.*

The Annual Meeting of the Association shall be held in the month of September or October at such time and place as the Executive Committee shall determine.

Special meetings may be called at any time by the President or Executive Committee of their own motion; and shall be called by the Secretary upon the request of fifty members, in writing, specifying the purpose thereof. At such special meeting no business shall be transacted except such as shall be specified in the notice thereof.

The Executive Committee and the Committee on Legislation shall meet in joint session not less than two weeks before such Annual Meeting, and shall prescribe such subjects for consideration at the Annual Meeting as said committees shall deem advisable. Due notice of the time and place of the Annual Meeting shall be given to each member of the Association by a notice which shall specify the matters to be brought before the Annual Meeting, as ordered by said committees. The actual expenses of said Executive Committee and said Committee on Legislation, when certified by the chairmen of said committees, respectively, shall be paid by the Association.

Nothing herein contained shall prevent the consideration at the Annual Meeting of any other business that may be regularly brought before it.

Each county, city, or local Bar Association of this State may annually appoint delegates, not exceeding three in number, to attend the meeting of this Association. Such delegates, if not regular members of this Association, shall be entitled to all the privileges of membership at and during the said meeting, except that of voting.

XIV. — *Quorum.*

At any meeting of the Association those present shall constitute a quorum. At a meeting of the Executive Committee or any standing committee whose membership exceeds ten, one-third shall constitute a quorum. Three members shall constitute a quorum of any committee whose membership is ten or less.

XV. — *Dues.*

Each member shall pay five dollars to the Treasurer as annual dues and the same shall be payable on the first of January in each year.

Any member in arrears for more than one year shall be dropped from the roll of membership, but upon payment of arrears, and upon written application, may be reinstated by the Committee on Membership.

XVI. — *Elections.*

At each Annual Meeting there shall be elected the officers of the Association, who shall hold their offices from the close of one Annual Meeting until the close of the succeeding Annual Meeting, or until their successors are elected.

In case of a vacancy in any office it shall be filled by appointment by the Executive Committee.

XVII. — *Amendment of By-Laws.*

These By-Laws may be altered or amended by a vote of two-thirds of the members present at any Annual Meeting, or special meeting called for the purpose, but no such change shall be made at any meeting at which less than thirty members are present. Notice of any proposed change shall be contained in the call of the meeting.

Massachusetts Bar Association.

OFFICERS, 1914.

President.

MOORFIELD STOREY.

Vice-Presidents.

WILLIAM H. BROOKS.
JAMES E. COTTER.
SAMUEL K. HAMILTON.
WILLIAM H. NILES.
HERBERT PARKER.
JOSEPH B. WARNER.

Secretary.

JAMES A. LOWELL.

Treasurer.

CHARLES E. WARE.

Executive Committee.

JOHN C. HAMMOND.
CHARLES NEAL BARNEY.
WILLIAM A. BURNS.
JAMES B. CARROLL.
WILLIAM A. DAVENPORT.
FRANK F. DRESSER.
DAVID A. ELLIS.
FREDERICK B. GREENHALGE.
FREDERICK S. HALL.
ROBERT O. HARRIS.
ROBERT HOMANS.
GARDNER K. HUDSON.
HENRY F. HURLBURT.
JAMES F. JACKSON.
MELVIN M. JOHNSON.
THOMAS J. KENNY.
JOHN W. MASON.
OLIVER PRESCOTT.
GEORGE S. TAFT.
EZRA R. THAYER.
JOHN J. WINN.
SIDNEY R. WRIGHTINGTON.

NOTICE OF ANNUAL MEETING.

To the Members of the Massachusetts Bar Association:

The annual meeting of the Massachusetts Bar Association will be held in Worcester on Friday and Saturday, October 9 and 10, 1914.

The annual dinner will take place at the Hotel Bancroft, Worcester, at 7.30 P.M., Friday, October 9. Tickets for the dinner may be obtained from Frank F. Dresser, Esq., Chairman of the Dinner Committee, 808 Slater Building, Worcester, by application before Thursday, October 8, at 12 M. There will be no charge for members of the Association. A limited number of guests may be invited by members of the Association and tickets for such guests may be obtained from Mr. Dresser upon payment of $5 for each ticket. Evening dress at the dinner will be optional. The after-dinner speakers will be Hon. Arthur P. Rugg, Hon. Thomas J. Boynton, and Hon. Roscoe Pound.

At 9 A.M. on Saturday, October 10, the Association will meet at the Hotel Bancroft, Worcester, to listen to the annual address of the President, to elect officers for the ensuing year, and then to proceed with the reports of the standing committees and such other regular business as may properly come before the meeting. At the conclusion of the regular business the Association will consider the special subjects prescribed for consideration at the annual meeting by the Executive Committee and the Committee on Legislation under the provisions of Article XIII. of the By-Laws.

The subjects for discussion are as follows:

(1.) Whether the Executive Committee be authorized to expend the funds of the Association in the employment of a legislative secretary to keep members informed of proposed legislation by means of bulletins or otherwise.

(2.) Whether bills of exceptions constitute in all cases the best method of raising questions of law for the consideration of the Supreme Judicial Court.

The latter question is referred to in a note to page 24 of the report of the Committee on Legislation which has been sent to each member under separate cover.

The Committee on Nominations has made the following nominations for officers:

For President:

HERBERT PARKER.

For Vice-Presidents:

WILLIAM H. BROOKS.
JAMES E. COTTER.
SAMUEL K. HAMILTON.
ROBERT O. HARRIS.
WILLIAM H. NILES.
JOSEPH B. WARNER.

For Secretary:

JAMES A. LOWELL.

For Treasurer:

CHARLES H. BECKWITH.

For Executive Committee:

CHARLES NEAL BARNEY.
WILLIAM A. BURNS.
JAMES B. CARROLL.
HENRY V. CUNNINGHAM.
WILLIAM A. DAVENPORT.
FRANK F. DRESSER.
DAVID A. ELLIS.
FREDERICK B. GREENHALGE.
FREDERICK S. HALL.
ROBERT HOMANS.
GARDNER K. HUDSON.
JAMES F. JACKSON.
MELVIN M. JOHNSON.
THOMAS J. KENNY.
HENRY C. MULLIGAN.
OLIVER PRESCOTT.
JOHN H. SCHOONMAKER.
EZRA R. THAYER.
CHARLES E. WARE.
JOHN J. WINN.
SIDNEY R. WRIGHTINGTON.

Mr. Niles has died since the Committee made its nominations.

Other nominations for any of the above offices may be made in writing by not less than nine members of the Association.

The Worcester County Bar Association has very kindly invited the members of the Massachusetts Bar Association to lunch with them on Saturday after the annual meeting.

Trains leave the South Station, Boston, at 5:00 and 5:52 P.M., arriving at Worcester at 6:06 and 7:00 P.M.

Rooms may be engaged at the Hotel Bancroft, Worcester, at rates from $1.50 to $3.50 per day for single rooms.

JAMES A. LOWELL, *Secretary*,

38 EQUITABLE BUILDING, BOSTON, MASS.

OCTOBER 2, 1914.

FIFTH ANNUAL MEETING.

Pursuant to the foregoing call, the Fifth Annual Meeting of the Massachusetts Bar Association was held at the Hotel Bancroft, Worcester, on Friday and Saturday, October 9 and 10, 1914.

As announced in the call for the meeting, the annual banquet was held on Friday evening. The address of the Hon. Arthur P. Rugg at the banquet appears on subsequent pages of this volume.

FIFTH ANNUAL MEETING.

The Fifth Annual Meeting of the Massachusetts Bar Association was held at the Hotel Bancroft, Worcester, Saturday, October 10, 1914, at 9 A.M.

The President, Moorfield Storey, delivered the following address:

THE PRESIDENT'S ADDRESS.

Gentlemen of the Massachusetts Bar Association:

This is emphatically an age of organization, for men recognize that by united effort they can accomplish more for the common good than any one man can secure by his individual efforts. He who works for himself must still work *by* himself, but he who would work for us all has a right to ask all who agree with him in his object to work with him. Ecclesiastical and political organizations have

long been familiar to us, but this generation has seen a wonderful development of organization among men engaged in every form of human activity from great business combinations like the Standard Oil Company and the great labor unions through chambers of commerce and baseball leagues, if I may reverse the popular order of precedence, to camera clubs and automobile associations. No trade, no amusement, no charitable object is to-day without its representative organization. These have all proved efficient in securing the objects of their members and are encouraged by public opinion, save in the case of business combinations, which have been too efficient in promoting private ends and for that reason are regarded as public enemies.

The members of our profession, although their business is largely internecine warfare, have not been able to resist this tendency, and perhaps stimulated by increasing attacks from without have combined "to provide for the common defence" and "to promote the general welfare" by organized attempts to remedy the abuses which have attended too long the administration of the law. Bar associations have sprung up all over the country, and are actively engaged in the effort to improve the law and its practice. No one can deny that they are useful and entitled to support from the profession and from the public, precisely because they are not formed to increase the profits or advance the fortunes of their members, but solely for public purposes with the incidental satisfaction which comes from the consciousness of duty well done and occasionally of dinner well eaten.

The Massachusetts Bar Association now ending its fifth year has come late into the field and finds it to a certain extent occupied by the bar associations of the various counties and by other legal fraternities. This is in some ways unfortunate, for it leads to useless duplication of effort, and at times to conflicts of opinion and a lack of harmony in action with consequent loss of influence. Each of these associations has its legitimate function, but the state association, properly organized and with full membership, will have a place that no one of the others can fill. It is impossible that a local bar association should not be

influenced by local prejudices and local desires. It cannot represent the interests and the opinions of the whole profession as well as an association whose members come from every corner of the state, and the local associations should work in and with the state association, and not without and against it. *I would urge every member of the Massachusetts bar to join this association, and to coöperate actively and intelligently with the other members in promoting its objects.*

But perhaps men may ask "Why? What can such an association give me as an equivalent for my time and my annual subscription?" Let me try to answer these questions.

In the first place it can hardly be denied that the members of the bar are interested in the work of the legislature, and need to be informed about it while our laws are in the making. We may not all be as fortunate as our brother who, being asked what he thought of a proposed reform, replied: "Well, I don't know. I've got cases on both sides of that question;" but there are none of us who are not, or who may not be, very much interested in one or more of the measures which are urged upon the legislature in any year. The statutes which regulate a procedure and practice, in some cases the rules of evidence as well as the provisions of substantive law, have suffered from the activity of individual lawyers, who, disappointed at the result of some litigation, have rushed in their wrath to the legislature and secured a change of the law or the practice. I can well recall my astonishment as I was about to present a question of construction to the court when I learned from my opponent's brief that without notice to me he had persuaded the legislature to pass a statute which repealed the law on which I relied. I was fortunate in persuading the court to hold its decision until I induced the legislature to amend the new law so that it should not apply to pending cases. This is merely an illustration.

The report of your committee on legislation shows what extraordinary laws are proposed and earnestly pressed by men who often do not in the least appreciate what they are doing, and a strong organization of competent men is

needed to protect the public against such ill-advised measures. A state association should appoint a committee fairly representing the whole state and its different interests, to watch and advise about legislation. This committee can employ a sentinel to keep the run of what is proposed, and by bulletins sent to the members of the Association at reasonable intervals can keep us all advised of what is going on.

It should consider what changes in the law are needed and suggest to the legislature well-directed measures of reform. It should urge upon the legislature and the public the considerations in favor of or against any proposed measure, and call upon the members of the Association for their aid where it is needed. The community can only gain from the work of such a body of competent advisers. With such a committee in existence every lawyer or association wishing to change the law should submit the proposition to the committee, and get the benefit of its criticism or suggestion. If the committee approves, the measure can then be proposed by the state association. If not, the movers might well consider whether the proposition should be pressed against such sound professional opinion. We should under such a system be spared the spectacle of one group of lawyers, representing a county or some particular interest, contending with the representatives of some equally respectable body before a legislative committee as to the merits of a proposition and pushing their respective opinions with controversial zeal. Such contests do not help the profession with the public, and it is far better that the discussion should take place at a meeting of the committee, or of the state association where differences can be reconciled, and that the conclusion reached should be supported by a united profession.

Another matter in which a state association can exercise an important influence is in regard to judicial and other legal appointments. The judge should be an expert and should have shown the character, courage, ability, and knowledge which his position requires. His professional associates are the best judges as to his fitness, and from personal contact in court or in consultation they learn to

know his quality, as doctors are the best judges of medical or surgical skill. *Credendum cuique in arte sua* is a maxim well fortified by human experience. In England judges are selected by the chancellor with the advice of leading lawyers, and the result is that the English bench stands high and commands the public confidence. Agitation for the election or recall of judges by popular vote would find few supporters in England. The best substitute that we can create for the trained professional judgment of the chancellor is a representative committee of the bar in which different localities and different interests of all sorts, political, geographical, racial or religious should have fair representation. Such a committee should be permanent and not appointed as each vacancy occurs. It should be a court waiting for the case, and not a court constituted to deal with a case which has already arisen, — not a tribunal that could be packed in favor of any candidate. Such a committee could keep its list of available men; it could at its leisure ascertain their qualifications; it could listen to all suggestions and weigh them intelligently; it would regard only fitness in making its recommendations, and these should and would carry the greatest weight with the appointing power. A state bar association can create such a committee, and no other organization can, and such a committee is imperatively needed.

Contrast it for a moment with our present system, of which from recent service on committees I have had a very instructive experience, and about which you will forgive me if I speak with perfect frankness. We all admit as an abstract proposition that a man should look only at the interest of the community in recommending an appointment, and should not be induced to advocate an unfit man by considerations of personal friendship. Certainly no one would contend that one should advise another to appoint a person whom he would not appoint himself. In theory we are all Brutuses, in practice we are cowards. Let me illustrate. Some years ago a candidate for a legal position undertook to get the unanimous indorsement of his county bar. He was not embarrassed by modesty, nor yet con-

spicuous for fitness, and several of the leaders insisted that they would not sign his paper. They even shut themselves up at home, but he overcame all obstacles and finally secured their signatures, and then the leader of the bar went to Washington with this unanimous indorsement, and seeing the senator whose recommendation was potential, presented the paper and urged the appointment in a little speech. When he finished the senator, who knew the candidate, said: "Well, A, if you were in my place should you recommend him?" A hesitated, and then replied like an honest man, "No, I should not." His undoubted mortification was well deserved, but this is only an extreme instance of a common practice.

We are tempted now to recommend a man because he is a good fellow, because he needs the salary, because he comes from our town, because he belongs to our party, our church, or our club, or because it is easier than to say "No." I have been amazed at the letters from prominent lawyers that have been shown me by the appointing power, letters written without reflection, letters commending men whom we all recognized as unfit, letters which indicated that the writers felt no responsibility to the community. I have called in some cases upon the writers, friends of mine, and asked them what they knew about the man whom they recommended and why they wrote in his favor, and in reply they have admitted that they knew little. One said: "I never liked the man, but a young man who used to be in my office asked me to write, and I did, but I wrote a very guarded letter." Another had also written a carefully worded letter, but he knew nothing as to the record of the candidate at whose request he had written. These instances might be multiplied indefinitely, — the forms of importunity are varied to suit the person approached. I can recall a member of the bar long dead who was prepared "with a heart for either fate," and who, on my refusing to sign a letter recommending him for the bench, presented an alternative in the shape of a subscription for his benefit, and asked me to contribute five dollars.

These letters may seem to the writers to be properly

guarded, but the appointing officer sees in them recommendations, and, if he is a layman, is perplexed when a committee of the bar advises him not to name a man whom eminent lawyers have indorsed. This system of appointment on irresponsible recommendations should not continue. It lowers all the standards of the profession.

The members of a county or city bar know their own associates, but are by no means equally familiar with the members of other bars. The Essex bar will urge an Essex man in perfect good faith, but its members are not in a position to weigh the merits of opposing candidates from Worcester or Springfield. We need a representative body of lawyers who can do exactly this, and if the Massachusetts Bar Association were to appoint such a committee as I suggest, and the names of the various candidates were submitted to them and all letters of recommendation or like testimonials were addressed to them, they, coming as they would from different localities, could thrash the matter out, weigh the respective claims and merits of the men proposed, and make a recommendation which would be a judgment and not the argument of counsel, and so would command the confidence of the appointing power. A governor, for example, would be glad to fall back upon such responsible advisers, and so avoid the disagreeable task of deciding between candidates. They would know far better than a governor how much importance they should attach to the letters written by a candidate's friends, and they could also adopt the salutary rule that no man who seeks judicial office and importunes his friends for their aid should be considered. No man can judge of his own fitness for the bench, and in this case preëminently the office should seek the man. Moreover, like the civil service law, it would save us all from importunity, for it should be the accepted rule that all recommendations should be addressed to this committee and not directly to the appointing officer, thus securing for them their just weight.

There is one thing more. The members of the association must be loyal to the association. It is idle for a committee on legislation to give its time and thought to framing

a law, it is idle for the association at a meeting to approve its action, it is useless for a committee on appointments to name a candidate, if the members of the association do not themselves support it, — if every man who differs with the majority of his associates opposes their propositions or their candidates. How can we expect the public to regard the recommendations of our association if we do not respect them ourselves? If the bar of Massachusetts as such is to have any influence, either with the legislature in shaping the law, or with the governor or court in matters of appointment, it must be united. The differences between its members should be settled at its meetings or by its committees, and the conclusion of either should be supported by the members save in rare cases where some important principle is involved. If the representatives of the association are not supported by their fellows we have only various lawyers, who cannot agree among themselves, carrying their differences into the committee room or the council chamber, and each man must guess what the bar thinks and wishes. United we shall deserve to have great influence; divided we shall deserve and shall have none. This may to some of you be unpalatable, but it is the truth, and it is time that the bar recognized it and governed itself accordingly.

If in practice this system does not work well, the remedy lies in putting our best men on the committees, in more fully attended meetings of the association, and in the creation of a public spirit among the members of our profession, which will make them realize the importance of the work that such an association can do, and inspire them to follow the example of our medical brethren who in hospitals and dispensaries give so much of their lives to the public service without pecuniary reward. There are enough men in our profession able and willing to give their time and thought to such unrequited labor, but they need and have a right to encouragement and support from the rest of us, who are less self-sacrificing. To assure this support is one object of a bar association.

There is abundant work waiting for our hands. We are justly proud of Massachusetts, of its laws, its judges and its

lawyers, but times change and we must change with them. The demands of our increasing population and of a more complicated civilization, the new situations, the new questions which confront us, must be met, and the machinery which served every need of a small and homogeneous community may be outgrown and need reform or reconstruction as the years go on. This work can only be done well by experts, and our profession must supply these.

Let me take an illustration from the work which this association and other bodies of Massachusetts lawyers have recently undertaken. There are many who think that the Supreme Court of this state is overworked and that it should receive immediate relief. Some propose to make it only an appellate court, transferring to the Superior Court all original jurisdiction including probate appeals. There are others who feel that hearing and deciding questions of law on appeal is not the most important judicial work, and that the conduct of trials in which facts are determined by juries or by the court itself is of at least equal consequence. None but a great judge could have tried the Tichborne case as Chief Justice Cockburn did, or could have tried the Crippen case as Lord Alverstone did, while such a proceeding as the trial of Thaw does the whole profession more injury than years of good appellate work can undo. The trial of the dynamiters at Indianapolis, of the conspirators at Los Angeles, of the suits against great business combinations under the Sherman law call for the highest judicial ability. In this department of their work the courts come nearest to the people, and efficiency here makes for prompt justice and lightens the labor of the appellate court, while poor judges in the lower courts increase it. There are many of us who feel that the trial of the very important questions raised in equity suits and in contests over wills, to say nothing of other proceedings now within the jurisdiction of the Supreme Court, are worthy of the best talent which the bench affords, and we all know that the Supreme Court is reinforced as vacancies occur either by those judges who from proved judicial capacity and long service on the Superior Bench are recognized as worthy of promotion, or

from leading members of the bar, while the Superior Court necessarily contains men who have had far less judicial experience, whatever may be their native capacity. The Superior Bench is in a sense the undergraduate department of our judiciary, while the Supreme Court is composed of graduates *cum laude*, and a lawyer cannot be blamed if for a great case he wants at least demonstrated ability and experience on the bench. It is felt also that the bench itself can discharge its appellate functions better if it has some original jurisdiction, and is required to do some *nisi prius* work; — that like Antæus it is refreshed and strengthened by contact with the earth.

Between these diverging views, which is right? Or is there a middle way safer than either extreme? Last year it was proposed that before taking the extreme step and relieving the Supreme Court of all save appellate work, we should try the experiment of taking from it all useless labor. To call five judges away from their other labors and make them visit different towns in the state where often the work awaiting them is very trifling, or to send members of the court to hold jury terms and summon jurors to meet them where there are no cases to try, seems to ask of the court a useless waste of time.

It was therefore proposed that the court should sit as an appellate court only in Boston, and should have power to sit at *nisi prius* when and where in its judgment the business required a session, no juries being summoned at stated times but only when needed. This would save the time of the court and the citizens summoned as jurors, and would save also the public money, while insuring more continuous sessions of the court for the present in Boston.

The proposed innovation was opposed by some members of the bar who have become accustomed to the old system and who anticipated inconvenience from the change, and it also offended some local pride and prejudice. But on the other hand many lawyers in all parts of the state favored the change because it insured prompt hearing of appeals and in some cases prevented a year's delay, thus operating to the advantage of the public.

The hardship to the bar of arguing their cases at Boston is doubtless exaggerated, when we remember that from the first the Supreme Court of the United States has always sat at the seat of government and lawyers have crossed the continent to argue their cases, and when we learn that in more than thirty-one states of the Union, including New York, Ohio, Illinois, and Indiana among the large and thickly settled States, and North Carolina, Nebraska, and Nevada among the States where communication between different sections is certainly less easy than in Massachusetts, the appellate court sits only in one place, it would seem a confession of inferiority if the members of our bar cannot encounter the difficulties to which their brethren all over this country cheerfully submit, and the advantage of speedier hearings would seem to outweigh the disadvantages of the change.

It is also to be suggested that it is possible to submit cases on briefs which may be written arguments. I belong myself to that old-fashioned class which clings to oral argument. I have often quoted Justice Miller's advice to Mr. Sidney Bartlett: "Never submit a case on brief." A good oral argument compels attention and drives a point home, while a brief may be read when every condition persuades repose. Very likely most of you like myself on reading an old brief have been surprised and mortified to find that statements which at the time seemed convincing lose their strength when viewed in retrospect. At the time one reads in his brief all that he means to say. A year later he sees that it may not have meant to the reader all that it meant to him when he wrote it. An oral argument brings out in questions from the bench the points where the case labors, but the writer has no such illumination. Moreover when arguments are written much of what is most attractive in our practice is gone. The traditions of the bar would be barren indeed if the eloquent arguments, the caustic interruptions, the humorous suggestions, the quick retorts of counsel and judges were razed from our chronicles. These things are the romance of our profession and we would not readily part with them. While the exigen-

cies of modern life permit, I for one should regret bitterly any change which would allow only written argument.

On the other hand, it is by reading that we learn the law, and we do not find it difficult in reading the reports to discover as a rule what the court means, or to select sentences from an opinion which sustain our views, and in many cases the opportunity for brilliant rhetoric is so slight that a compact brief may well be substituted for oral argument, and counsel secures a speedy decision for his client without the trouble and expense of a journey for himself. He may console himself by the reflection that while words are winged, *litera scripta manet*, though this is not always a consolation.

It has been suggested that the bench might also spare itself some labor by writing less elaborate opinions. The famous advice of Lord Mansfield to the colonial judge that he give his judgments and not his reasons for them, since the former would probably be right, while the latter might be wrong, rather discredits long essays, and our brethren of the court should not be surprised if they who have cut our opportunities for eloquence in half by allowing only one hour of argument to each side should find us suggesting to them a corresponding sacrifice. Condensation is difficult, but the trouble which it gives the writer is outweighed many times by what it saves generations of readers. There are many cases where there is little room for doubt in the court's mind, and there an opinion *per curiam* would seem sufficient for all purposes. But it should be said that there is no reason to criticise the present court for unusual prolixity. I have taken pains to compare the number ot decisions reported in different volumes ten years apart, and I find that Volume 214 contains more cases in substantially the same number of pages than volumes taken ten, twenty and thirty years back. We can only praise such a record and say "Macte."

But if *per curiam* opinions are to become common the court itself must respect them, and not as has happened when such a decision was cited, say, "Oh, that was only a *per curiam* opinion." Judgments in which the court con-

curs without doubt or question should on the contrary be of the greatest weight, and while counsel may or may not enjoy a full discussion of their arguments, in most cases the rest of the profession is content to know the result, feeling about each other's ordinary cases as an eminent senior did, who, finding a friend sitting at the counsel's table just before the court came in, remarked, "Ah, brother L, I see you have the first case this morning. I presume it is a case of no importance. How long is it likely to take?" Let me say in conclusion "*Interest reipublicæ ut sit finis litium*" and the *lis* is not ended till one has read the last word of the court's judgment.

A bill has been prepared and presented to the committee on legislation which will be brought to your attention, and which proposes a compromise between the varying views. It transfers all the original jurisdiction of the Supreme Court to the Superior Court, but it gives to every judge of the Supreme Court all the powers of a judge in the Superior Court with authority to sit in that court as if he were one of its judges, and it directs that arrangements be made by the Chief Justice of the two courts under which the judges of the Supreme Court shall sit in the Superior Court and take part in the transaction of its business so far as this can be done without interfering with their work as justices of the higher court.

This measure if adopted would follow the precedent established by the laws which regulate the Supreme Court of the United States, whose members for many years after I came to the bar sat in the Circuit Court, presided at jury trials, heard cases in equity, and were practical working members of the Circuit Bench. In recent years they have appeared less in the lower court, but they still have the power to act as circuit judges, and in certain exigencies would undoubtedly exercise that power. A precedent is also found in New Hampshire where by a statute of the last year judges of the Supreme Court are given power to sit as judges of the Superior Court, and there is abundant precedent in England where judges of appellate tribunals have always been expected to do *nisi prius* work.

The proposed statute also reduces the number of judges needed to constitute a quorum, and allows the court to sit in two divisions at the same time, with provision for hearings before a fuller bench when the court shall think it important, as to-day the court submits the briefs to the judges who have not heard the case, when it desires their aid in reaching a conclusion. Three judges in an appellate court are in my judgment better than a larger number, for each feels more responsibility for the decision, while discussion is abbreviated though enough is secured. Three judges were enough to determine the law of England for years in each of its great courts, and to-day the same number constitutes the House of Lords for judicial purposes. Our court would find itself sensibly relieved if this change were adopted, and would have ample time for all the work which seems now too great a burden, while the law of Massachusetts would not suffer. This suggestion will, I think, upon consideration and study commend itself to the bench and the bar alike.

My mind is full of other subjects, and I realize that your constitution imposes no time limit on your president's speech, but I should be sorry to provoke a constitutional amendment, and I am aware that there is much to do and many more to speak at this meeting. One more suggestion and I am done.

The courts now spare themselves labor by sending the most important and difficult cases to auditors and masters, and this is necessary. But it is equally necessary that more adequate provision should be made for doing the work confided to these officers. In these days of many courts and conflicting engagements, to say nothing of longer and more frequent vacations, it is very difficult to get cases heard by a master, and sometimes harder to get them decided. There is a constant pressure on the courts to finish their cases, for they work in the public eye. A case sent to an auditor is side-tracked and waits the luxurious convenience of counsel and magistrate, and the latter finds it easy to postpone his decision, forgetting that delay dulls his recollection of evidence and arguments and does not enhance his judicial acumen. No counsel wishes to hurry him for fear

of an unfavorable reaction, and thus cases of the first importance drag on for years, and clients learn to distrust the law and its ministers. For the sake of us all, clients and counsel alike, this state of things must be remedied. Laziness and good nature are responsible for its continuance, and these elements of human nature are permanent. Whether there should be a master's court with a regular docket, or orders compelling hearings and decision within fixed periods on penalty of losing compensation in case of failure to obey, or whatever other remedy is needed, such an association as this should consider and decide. The present system is a crying evil, and the cure rests with you.

I have made only a few suggestions as to the work before this association, but its field is as wide as the law. Take up this work seriously and give it time and thought, such as you give to the cases of your clients. The work of the association is *our own case*, the case of our profession, the case of the community which we serve, and we must give it our attention or it will suffer. We can shirk our share of the labor, but we cannot escape our share of the responsibility. In the words of Senator Borah, recently uttered in the Senate: "It is a common and I think a deplorably common thing in these days to be always assailing the courts." Their defence is in our hands, and the only sure defence is the removal of the things which cause complaint. It is for our profession to accomplish this, for unless we can make justice reasonably prompt, sure and cheap, we shall fail in our lifework, and our profession as well as ourselves must bear the consequences of our failure.

The following reports were then read and accepted:

TREASURER'S REPORT.

FITCHBURG, MASS., Oct. 9, 1914.

To the Massachusetts Bar Association:

The Treasurer of the Massachusetts Bar Association presents herewith his fifth annual report.

The fourth year closed with 646 active members, a gain

of 36 over the previous year, besides 45 honorary members. On the first day of January seven members were automatically dropped for non-payment of dues and the resignation of eight others took effect the same day, so that this year began with 631 active members.

During this year 41 new members were elected and 37 enrolled, as three have not yet paid their dues and one declined the election. Six members have died during the year. This now leaves us with 665 active members. As the year does not close under the By-Laws until December 31st, there is still opportunity for the three new members to pay their dues, also for the 50 whose dues remain unpaid (five having paid since the books closed) to pay before the close of the calendar year.

The following are the statements of receipts and disbursements up to and including October 6th, to which is appended a report of the Auditors, Messrs. Robert Homans and S. R. Wrightington, appointed for that purpose by the President:

Dr.

Amount of balance from last account, Dec. 15, 1913	$3,649.18
Received 28 Annual Dues for 1913	140.00
Received 611 Annual Dues for 1914	3,055.00
Received from J. A. Lowell, Sec'y, for 8 guests tickets for Annual Dinner at $5 each	40.00
Received from J. A. Lowell, Sec'y, for 7 tickets from new members (to be elected) for Annual Dinner at $3	21.00
Received from J. C. Hammond (copies of his address)	14.50
Received interest on deposit to Oct. 1, 1914	70.61
	$6,990.29

Cr.

1913.				
Dec.	20.	Paid Addison C. Getchell & Son, Report of Com. on Legislation	$277.75	
1914.				
Jan.	2.	" Chas. E. Ware, express on books returned from Auditors, and telephone	.45	
"	3.	" H. M. Downs Printing Co., 1,000 receipts, 1,000 stamped envelopes and 100 cards	29.15	
		Amounts carried forward,	$307.35	$6,990.29

		Amounts brought forward,	$307.35	$6,990.29
Jan.	3.	Paid Brooks Reed Gallery, teaming portrait of ex-Chief Justice Holmes to Tech. Bldg. and return	1.50	
"	7.	" James A. Lowell, Sec'y, for expense at Annual Dinner	5.00	
"	7.	" The Rockwell & Churchill Press, tickets for Annual Dinner	8.25	
"	7.	" The Rockwell & Churchill Press, notices of Annual Meeting	19.00	
"	7.	" Sargent & Cox, circular letters sent to new members in regard to Annual Dinner	2.00	
"	7.	" Wright & Potter Printing Co., 500 copies of songs for Annual Dinner,	22.50	
"	7.	" Henry R. Brigham, services regarding notices of meeting, hanging of portrait of Mr. Justice Holmes, mtg. and dinner on Dec. 22, etc.	52.29	
"	7.	" The Copley-Plaza Operating Co., Annual Dinner, etc. (300 at $3)	1,007.70	
"	9.	" F. W. Grinnell, repaid 3 bills of A. C. Getchell & Son, draft of Act on Legislation	43.25	
"	17.	" Frank H. Burt, reporting 4th Annual Mtg, etc.	71.20	
"	17.	" Geo. H. Ellis Co., printing letter heads,	15.25	
"	19.	" Massachusetts Institute of Tech., Janitor service in connection with the use of Huntington Hall for the unveiling exercises	5.00	
"	22.	" John G. Faxon, Agent, Mass. Bonding Co. for Treas. bond	12.00	
Feb.	4.	" Geo. H. Ellis Co., 500 2c. envs. for Sec'y	12.50	
"	4.	" Sargent & Cox, typewriting correspondence relating to the membership of committees for 1914	7.30	
"	12.	" C. E. Wallace, Postmaster, 500 env. (Treas.)	10.62	
"	18.	" New American House, dinners at Special meeting, Feb. 14	69.70	
March	6.	" Addison C. Getchell, printing circular a/c Legislative Com.	33.00	
"	6.	" Addison C. Getchell, printing circular a/c Legislative Com.	34.75	
"	6.	" Carolyn Veazey, typewriting a/c Legislative Com.	13.14	
April	15.	" Frank H. Burt, report of special Mtg. Feb. 14, 1914	50.00	
		Amounts carried forward,	$1,803.30	$6,990.29

		Amounts brought forward,	$1,803.30	$6,990.29
May	6.	Paid Carolyn Veazey, typewriting for Legislative Com.	11.50	
"	6.	" Carolyn Veazey, typewriting for Legislative Com.	3.20	
"	6.	" Henry R. Brigham	59.01	
June	1.	" Carolyn Veazey, typewriting for Legislative Com.	18.10	
"	13.	" Addison C. Getchell & Son, circular letters & article regarding admission to the Bar sent out by the Legislative Committee	45.50	
"	13.	" Addison C. Getchell & Son, 700 half note circulars as above	3.75	
Sept.	10.	" M. E. S. Curtis, stenographer (16 copies of Report)	8.60	
"	11.	" M. A. Allen, stenographer, Annual reports	60.31	
"	11.	" The Rockwell & Churchill Press, printing 4th Annual Report	557.75	
"	11.	" Henry R. Brigham, services 4th Annual Report	76.59	
"	23.	" Bullard & Newell, multigraph letter in regard to dues	1.50	
Oct.	5.	" Geo. H. Ellis Co., 200 letter heads	4.25	
"	6.	" Carolyn Veazey, typewriting, etc., for Legislative Committee	44.74	
		Balance on hand	4,297.19	
			$6,990.29	$6,990.29

Respectfully submitted,

CHAS. E. WARE,
Treasurer.

668 members.
611 paid.

57
2 paid in 1913 for 1914.

55 unpaid October 6, 1914.

OCTOBER 7, 1914.

We have audited the foregoing account and find it correctly cast and properly vouched and that the balance stated of $4,297.19 is on deposit to the credit of the Massachusetts Bar Association.

ROBERT HOMANS,
S. R. WRIGHTINGTON,
Auditing Committee.

REPORT OF THE EXECUTIVE COMMITTEE FOR THE YEAR 1914.

The Executive Committee has held three meetings. At its first meeting, on February 2, 1914, the Committee acted on a matter referred to it by vote of the annual meeting and voted to recommend to the special meeting of the Association, to be held in February, that the constitution be amended to allow the Committee on Grievances in its discretion to investigate misconduct of members of the Bar of which no formal complaint had been made. It also voted to recommend a change in the constitution so that the annual meeting should be held in September or October. These proposed amendments to the constitution were adopted at the special meeting of the Association. The Committee further considered at length the recommendations of the Committee on Legislation as to proposed legislation and authorized that committee to support certain measures and oppose others as more specifically appears in the report of the Committee on Legislation. It also passed on certain of the recommendations of the Committee on Grievances.

At the other meetings of the Committee members have been elected and various other business transacted. At a joint meeting with the Committee on Legislation the subjects for discussion at this annual meeting were chosen.

JAMES A. LOWELL,
Secretary.

REPORT OF COMMITTEE ON MEMBERSHIP.

The Committee on Membership has held four meetings during the year 1914 and has passed favorably upon sixty applications for membership.

The Committee recently had sent to various members of the Bar in Boston and in Worcester County the report of the Committee on Legislation, and the sending of that report has resulted in many applications for membership. Mr. William C. Mellish, of Worcester, a member of the Committee, with the assistance of Mr. F. F. Dresser, has been

most active in securing applications from members of the Bar in Worcester County, and, as a result of his efforts, many new members from that county have applied for membership.

The Committee is of opinion, as has been stated by previous membership committees, that the holding of meetings of the Association in counties outside of Suffolk is a great help in increasing the membership.

Respectfully submitted,

ROBERT HOMANS,
Chairman.

REPORT OF THE COMMITTEE ON LEGAL EDUCATION.

The principal work of the Committee during the year was in connection with the proposed legislation in regard to admission to the Bar. The report of the Committee on Legislation gives a full statement of the bills which were introduced and of the act which was passed. The evident purpose of the bills was to prevent the bar examiners requiring applicants for admission to the Bar to have any general education. Your Committee was opposed to this legislation and its chairman spoke against the same before the Judiciary Committee. A letter written by Dean Ezra R. Thayer, a member of your Committee, giving reasons why the bills should not be recommended was also submitted to the Judiciary Committee.

The report of the Judiciary Committee was adverse to all said bills and none of them were passed as originally presented. One, however, was amended to read, — "that an applicant for admission to the Bar shall not be required to be a graduate of any high school, college or university." As thus amended it was passed by the House and the Senate and approved by the Governor in spite of objection made by this Committee and by the Committee on Legislation, and by the President of this Association.

The Board of Bar Examiners, being somewhat in doubt as

to the true meaning and effect of the statute thus enacted (Acts 1914, Chap. 670), were advised by members of this Committee and other members of the Bar as follows:

To the Board of Bar Examiners:

We, the undersigned members of the Bar in Massachusetts, have carefully examined and considered the existing rule of the Board of Bar Examiners as to general education, a copy of which is annexed hereto. We are of the opinion that this rule does not conflict with the recent act of Legislature, Chap. 670 of the Acts of 1914, approved June 15, 1914, to take effect September 1, 1914, a copy of which Act is also hereto annexed. We approve of the rule as it now stands and think it should not be altered by reason of said legislation.

GEORGE L. MAYBERRY.	RICHARD OLNEY.
CHAS. T. GALLAGHER.	EZRA R. THAYER.
SHERMAN L. WHIPPLE.	MOORFIELD STOREY.
CHAS. F. CHOATE, JR.	ALFRED HEMENWAY.
HOMER ALBERS.	JOHN C. HAMMOND.
JOHN E. HANNIGAN.	FREDERICK P. FISH.
CHAS. E. SHATTUCK.	SAMUEL J. ELDER.
AARON H. LATHAM.	DAVID A. ELLIS.
A. S. COHEN.	SAM'L C. BENNETT.
WILLIAM ODLIN.	T. H. GAGE.
WILLIAM S. YOUNGMAN.	ELBRIDGE R. ANDERSON.
ELLIOTT B. CHURCH.	RICHARD W. HALE.
JAMES THOMAS PUGH.	ROBERT HOMANS.
NATHAN P. AVERY.	JOHN W. MASON, Northampton.
WM. G. BASSETT.	HENRY P. FIELD.
GEORGE P. O'DONNELL.	STEPHEN E. YOUNG.

This movement to let down the bars is not a new one. Similar efforts have been made in other states in recent years. Usually a full discussion of the subject has convinced the legislatures of the different states that the public welfare demands that members of the Bar should be not only honest but also well educated. The different state bar associations have felt that there was a distinct duty resting upon them in the matter, and have worked faithfully, and usually with success, to prevent unwise legislation as to admission to the Bar.

In several states, including Illinois and Wisconsin, the

courts have held that the Legislature could not dictate to the Court as to the qualifications of the members of the Bar.

See In re *Day*, 181 Ill. 73.
People v. *Amos*, 246 Ill. 301.
Witter v. *Cook County*, 256 Ill. 624.
Vernon Co. Bar Ass'n v. *McKibbin*, 153 Wisc. 350.
In re *Mosness*, 39 Wisc. 509.
License to Practice Law, 67 W. Va. 213.
In re *Brunch*, 70 New Jersey Law, 537.
In re *Raisch*, 90 Atl. Rep. 12 (N.J.).
See contra
In re *Applicants for License*, 143 No. Car. 1.

In Massachusetts this question has never been passed upon. The weight of authority seems to be that while the Legislature under its police power may provide that certain classes of applicants shall not be eligible, the Court cannot be deprived of its inherent power to fix the qualifications of the members of the Bar.

Your Committee hoped that the Governor, being a member of the Bar, would heed the protest made by the President of this Association and veto the bill which was finally enacted.

The following is a copy of the letter sent by Mr. Storey to the Governor:

JUNE 8, 1914.

HIS EXCELLENCY, DAVID I. WALSH,
Governor of the Commonwealth,
State House, Boston, Mass.

SIR: An Act, House Bill No. 2637, a copy of which I beg to hand you herewith relative to admission to the Bar of attorneys at law, has passed the House and Senate and will shortly reach your Excellency for approval or disapproval.

The Massachusetts Bar Association, of which I am President, has opposed this bill at every stage, and I now desire on behalf of that Association to express my earnest hope that you will veto this bill.

The good name of Massachusetts is involved in this matter. She cannot afford to be behind the other states in her requirements for admission to the Bar. This would place her distinctly in the rear. The welfare of the community requires that the members of the Bar should have a reasonable

amount of education, not only to render members of the Bar competent to advise their clients but also to enable them to render the type of service which an intelligent Bar ought to render to the community and to the commonwealth.

I beg to hand you herewith a copy of the detailed statement of objections. I sincerely trust that you will feel it to be your duty, both to the profession and the commonwealth, to veto this pernicious and reactionary piece of legislation.

Yours very truly,

MOORFIELD STOREY.

Your Committee feels very strongly that the Legislature ought not to interfere with the Court in the matter of the educational qualifications of applicants for admission to the Bar.

HOLLIS R. BAILEY.
WILLIAM C. WAIT.
SAMUEL C. BENNETT.
EZRA RIPLEY THAYER.

REPORT OF COMMITTEE ON JUDICIAL APPOINTMENTS.

Your Committee on Judicial Appointments respectfully reports with reference to the period that has elapsed since the annual meeting in December, 1913, as follows:

Early in the year 1914 the death of Hon. Nathan D. Pratt, of Lowell, created a vacancy on the bench of the Superior Court. On January 19th the Committee sent to Governor Walsh a letter in which they said:

> "Your attention is respectfully called to the fact that the Massachusetts Bar Association has a standing Committee on Judicial Appointments, which, by Article XII. of the constitution of the Association, is charged with the duty of furthering in all proper ways the appointment of suitable men to judicial office, 'to the end that the office of judge may be one of dignity and respect, with proper emolument, and that lawyers of high character, sound learning, wide experience, and judicial temperament may be placed upon the bench.'

Believing that it may be of possible aid to you in the making of such appointments from time to time, and that you would be glad of its assistance, the Committee respectfully offers its services to you.

The Committee will have no special candidates to indorse, but it would be glad to advise as to the qualifications of men who may be suggested, or to hand you, in case of a given vacancy, a number of names, any one of which might, in the Committee's opinion, well be chosen.

It is understood that a vacancy now exists in the Superior Court, due to the recent death of the Hon. Nathan D. Pratt, of Lowell; and the Committee will be glad, if such be your pleasure, to confer with you regarding the nomination of his successor."

The Committee held several meetings for the purpose of canvassing the qualifications of lawyers whom they believed to be available for the position, including a list of candidates given to the Committee by the courtesy of the Governor himself. The names of several persons were then sent to him, with the statement that, in the opinion of the Committee, the appointment of any one of them would add to the court a competent and satisfactory judge. Several members of the Committee in their official capacity also had personal interviews with the Governor in relation to the appointment.

In this instance our recommendations were made after conference had with and at the request of Messrs. Charles F. Choate, Michael J. Sughrue, James F. Jackson and James E. Cotter, appointed by the Council of the Bar Association of the City of Boston as a standing Committee on Judicial Appointments and also as a special committee on the vacancy at the time pending. In connection with that conference a proposal was received by our Committee from the Boston Association, suggesting that provision be made for a joint standing committee of the two associations; and this is a subject to which further reference is made in the concluding part of this report.

The only other occasion on which your Committee took

any action was furnished by the vacancy that arose in the Land Court in March last, due to the death of Judge Louis M. Clark. Here, also, the Governor furnished us the names of candidates that had been brought to his attention; and, after conferring with the members of the above-mentioned Committee on the part of the Boston Association, your Committee submitted to the Governor a list of names and pertinent data, together with suggestions and recommendations.

The following quotation from a letter written by Richard W. Hale, Esq., as Secretary of the Boston Association, under date of January 26, 1914, brings up the proposal above referred to, viz.:

> "At a meeting of the Council of The Bar Association of the City of Boston held on January 22, 1914, it was voted that the Council annually appoint a committee of four from its members to be known as the Standing Committee on vacancies in Judicial and Court offices, and that such committee confer with a corresponding committee of the Massachusetts Bar Association, to the end and with the suggestion that the Massachusetts Bar Association annually appoint a committee of seven of its members, of whom one shall be a member of the Bar of Berkshire County, one a member of the Bar of Worcester County, one a member of the Bar of Bristol or Barnstable County, one a member of the Bar of Essex County, one a member of the Bar of Middlesex County, and one a member of the Bar of Norfolk or Plymouth County, who shall be a Standing Committee to sit with the four persons composing the Standing Committee of the Boston Bar Association as a Joint Standing Committee upon vacancies in Judicial and other Court offices.
>
> "Pending a proposal that this committee be specially authorized by a meeting of the Association and then appointed as a permanent committee of the Council, Messrs. Charles F. Choate, Michael J. Sughrue, James

F. Jackson, and James E. Cotter were appointed to be this committee and to be a Committee of Conference with the Massachusetts Bar Association.

"They were also appointed to be a special committee on any judicial appointments now pending before the Governor."

Your Committee has in response simply promised to bring the question before the Association for consideration and decision. To adopt the suggestion and make provision for carrying it into effect would require a change in the present by-laws, since they provide definitely for a Committee on Judicial Appointments consisting of nine members.

Whether the two associations concerned may best seek to exert their influence upon such appointments through action taken by one joint committee or by means of recommendations made by two several committees, each representing its own association, but acting, perhaps, after conference with the other, is a question upon which the members of your Committee are in doubt, and they bring the matter to the attention of the Association for decision without any recommendation.

Respectfully submitted,

ROBERT P. CLAPP,
Chairman.

After a discussion of this report, upon motion of Mr. Robert P. Clapp, duly seconded, it was:

VOTED, That this Association, while thanking the Bar Association of the City of Boston for its suggestion as embodied in Mr. Secretary Hale's letter of January 26, 1914, addressed to Charles F. Choate, Esq., and by him submitted to the committee of the Massachusetts Bar Association, is of the opinion that both associations may exert their influence in the matter of judicial appointments more wisely and effectively if the committees remain independent; but that the Association does favor the plan of the committees conferring one with the other from time to time before making recommendations.

REPORT OF COMMITTEE ON GRIEVANCES.

The disbarment case against J. Frank Williams, of Lynn, which was instituted during the year 1913, was prosecuted to a final decision, Judge Quinn handing down a decision for disbarment on July 21, 1914.

In the matter of the complaint against Charles W. Lovett, of Lynn, William G. Thompson of the Suffolk Bar was retained to prosecute the case, which will probably be heard some time during the coming winter.

Fifteen or twenty complaints have been made against attorneys in small collection matters, all but one of which have been adjusted by the Secretary.

L. ELMER WOOD,
Chairman.

ELECTION OF OFFICERS.

The nominating committee reported a list of officers, and after consideration the men so nominated were elected. The list of the officers elected is printed at the beginning of this report.

REPORT OF COMMITTEE ON LEGISLATION.

The report of the Committee on Legislation, which was distributed in print to the members before the meeting, appears at the end of this volume.

VOTES OF THANKS.

The PRESIDENT: The next business in order is the discussion of the questions that have been presented by the committee.

Mr. WHITMAN: Mr. President, may I interfere with the established order just one moment and rise to say that I express what I know is the appreciation of the Association to you, sir, for your services as President during the year. Not only for the acumen, legal and mental, which you have

brought to your performance of duty, but for the time and energy which you have given, the Association is grateful. I would therefore move a vote of thanks and ask that the Secretary put the motion.

The motion was seconded by Mr. Ensign and put to vote by the Secretary and unanimously carried.

The PRESIDENT: Gentlemen, I highly appreciate it and am grateful for the vote.

Mr. WRIGHTINGTON: Mr. President, this seems an opportunity to remind the members that we this year lose the services of the treasurer, who has served us since the organization of the Association, and in recognition of his services I move a formal vote of thanks.

The motion was seconded and carried unanimously.

Mr. WARE: I thank you, Mr. President, and gentlemen.

Mr. HOMANS: I would move that the thanks of the Association be given to the members of the Worcester Bar who have done so much for our entertainment here yesterday and to-day.

The motion was seconded and carried.

TRIBUTE TO THE LATE WILLIAM H. NILES.

Mr. BAILEY: Mr. President, it appears by the call for the meeting that William H. Niles, Esq., of Lynn, has passed away during the past year. It seems to me that it is fitting that some word of recognition of the service which he rendered to this Association should be said at this meeting. It happens to be within my knowledge, and perhaps not within the knowledge of the other members of the Association, that this Association owes its existence more to Mr. Niles than to any other one man. He began talking about it three or four years before it was organized. He was inspired in that view that a State Bar Association was

desirable by what he saw at the meetings of the American Bar Association. He felt that Massachusetts, like the other states in the Union, should have a State Bar Association. He began talking to me at Detroit and at other meetings of the American Bar Association. Finally he began talking to Mr. Friedman and he persuaded him and persuaded me that it was desirable that Massachusetts should have a State Bar Association. If he had not year by year advocated the formation of the State Bar Association I doubt if it ever would have been formed, or at any rate it would have delayed coming for quite a number of years. Since the Association was formed Mr. Niles has been interested, active, and helpful in the work of the Association. This is no time to pay a tribute to Mr. Niles' worth, — he was recognized in his own county of Essex, was President of the Essex County Bar Association, — but I do think that we should spread upon our records not any resolution, but let it appear that we did have in mind that he was a valued member of the Association.

The PRESIDENT: If there is no objection these remarks will be spread upon the records of the Association as an expression of the Association's feelings.

DISCUSSION.

Employment of Legislative Secretary.

The SECRETARY: The first question for discussion is this:

> (1.) Whether the Executive Committee be authorized to expend the funds of the Association in the employment of a legislative secretary to keep members informed of proposed legislation by means of bulletins or otherwise.

Mr. DAVID A. ELLIS: Mr. President, some of the work of the Legislative Committee has been very arduous indeed. To follow up all the bills as they are introduced at the State House, to collate those, to determine which ones should be dealt with at all, which should be favored, which should be opposed, and then to start the machinery of the Legislative

Committee and of the Executive Committee going on the subject, has called for a very large degree of labor, which has been faithfully and efficiently performed by Mr. Grinnell, the secretary of our Committee. I do not think the members begin to appreciate how great a sacrifice of time and energy it has required upon his part. I do not think the Association has the right to ask that an individual should continue such large personal sacrifices. It seems proper that the Legislative Committee should be assisted by some member of the bar who is paid for his work and who can attend to a great deal of the routine and detail work of the committee. No such paid man, I am sure, could be expected or hoped to write such a report as Mr. Grinnell has written for the Legislative Committee, but the routine work and the detail work and the following of the bills is a matter that he might be expected to do. If that was done the Legislative Committee would be relieved of a very serious burden. In addition to that it seems to me entirely feasible for the Committee to issue bulletins from time to time to the members of the Massachusetts Bar Association, keeping them advised of what is taking place at the State House. Members of the Bar Association, particularly those who reside at some distance from Boston, feel that such services would be very useful indeed to them. I think that the Association could afford to undertake that work from the financial point of view. I think Mr. Ware, with whom I discussed the matter last night, would agree in that regard. I think, too, that an active keeping in touch with members of the Association throughout the State through the bulletins of the Legislative Committee would be a very strong argument for adding to the membership of the Association and would so swell our receipts, perhaps to as great an extent, at any rate to a large part of the expense, which this expense would impose upon the Association.

Mr. THAYER: Mr. President, the statement was made that the Association could afford to do it. I should amend that by saying that the Association could not afford not to do it. No one who has seen the work that Mr. Ellis and Mr. Grinnell have been doing could even faintly realize the

quantity and quality of that work, and if they believe they need any such assistance as this I do not think there is much to discuss about it.

Mr. HAMMOND: I had hoped that Mr. Ellis and Mr. Grinnell would have prepared a motion by which that could be put concretely upon our records. I certainly endorsed that suggestion.

Mr. E. A. WHITMAN: Mr. President, may I make a suggestion from a little different point of view. It seems to me that not only is this due to the gentlemen who have done so much work, but it is due to this Association. The chairman of the Judiciary Committee of the last Legislature told my partner that the Judiciary Committee was a little tired of hearing about the bar associations, and that the recommendation of the bar associations did not carry much weight with that committee. And that, I take it, was due to the fact that frequently, from pertinent questions being put by the committee when measures were presented, it had to appear that the measure which was advocated in the name of the Bar Association had been considered by a few gentlemen, almost all of them residents of Boston, and only in name and so far as the report was concerned was it the recommendation of the Bar Association. Anything, therefore, which can be done to enlist a larger interest throughout the Association and to convince the Legislature that what is presented to them is not the result of the consideration of two or three gentlemen, but has had at least the consideration of a larger number, is bound to have weight.

Mr. FITZ HENRY SMITH: I should like to add a word along the lines of the gentleman who has just sat down, a personal and a practical view of this case. It was my lot — I was going to say misfortune — to sit through the last Legislature, — my first offence. As most of you know who have anything to do with the General Court of Massachusetts, it is about all that a man can do to follow the bills before his own committee, to get to the bottom. Matters affecting legal questions go to more than one committee. The Judiciary Committee by no means handles all the bills which cover matters in which a lawyer is supposed to

be interested. There is the Committee on Legal Affairs; bills relating to corporations go to the Committee on Mercantile Affairs. The Committee on Mercantile Affairs did not this year have a single lawyer on it, and they reported one very important bill respecting the rights of minority stockholders to representation on boards of directors, an unconstitutional measure, which we were able to defeat. The secretary of this Association would be able to keep in touch with all measures, no matter what committee they went before, and sending notices to all members of the Association would not only keep the members of the bar in touch with the situation, but would also keep the lawyers in the Legislature who were not members of the Committee in touch with the situation. I think the proposition will be of benefit not only to the members of the Bar who are outside the Legislature, but to poor fellows like myself who are in the Legislature.

The PRESIDENT: The question is, changing the question to a motion — it is moved that the Executive Committee be authorized to expend the funds of the Association in the employment of a legislative secretary to keep members informed of proposed legislation by means of bulletins or otherwise.

The question being put on the motion as stated by the chair, the motion was unanimously adopted.

DISCUSSION.

(2.) Whether bills of exceptions constitute in all cases the best method of raising questions of law for the consideration of the Supreme Judicial Court.

The SECRETARY: The second subject for discussion is this: Whether bills of exceptions constitute in all cases the best method of raising questions of law for the consideration of the Supreme Judicial Court.

The PRESIDENT: The chair awaits any suggestion.

Mr. ELLIS: Mr. President, perhaps it would be well for me to explain what the Committee had in mind in suggesting this issue. We have, in the first place, no definite program which we ask the Association to adopt on this particular matter. We thought it an important and interesting matter which would be illuminated by discussion, and from such discussion we hoped that the Legislative Committee and the members of the Association in general would profit.

A serious situation exists in the matter of bills of exceptions. It is common experience, I suppose, after a case has been tried and exceptions have been taken, that often a number of months, sometimes a year, sometimes even longer than that, elapses before a bill of exceptions has been prepared and allowed by the Court. This delay is a very serious matter to the clients who are interested in the cause. It is also a very serious reproach to the administration of justice. It is not only time, however, which is lost in the matter — it only too frequently happens that there are lengthy and widespread wrangles over the subject of what should go into the bill, and that a great deal of valuable time and energy on the part of counsel is consumed. This seems to be a real evil in the administration of our system which calls for some sort of remedy. In the report of the Legislative Committee there is a footnote prepared by Mr. Thorndike which calls attention to the English practice in this matter. That practice, in a nutshell, is to have the whole case go up at once to the appellate court upon either the judge's notes or the stenographer's notes, as the case may be, and upon the actual exhibits in the case, so that the appellate court has before it all the material upon which the case was tried and has this material presented to it in the very shortest possible time.

Now, such a system presents very marked advantages over the one which is in vogue in this State. On the other hand, we all realize, I think, that the methods of trial in England are considerably different from those which obtain here; that the trials as a whole are very much shorter and that the attitude of the Bar towards exceptions is very

different from the attitude which we have in this Commonwealth, and still more different from that which obtains in most parts of the United States.

The great objection to going up on the whole record is, of course, the danger of overloading the Supreme Judicial Court. It would have the great advantage of saving time; it would have the great advantage of sparing counsel the long and acrimonious wrangles that take place over bills of exceptions; but the great objection to it would be that it would tend to overload the Supreme Judicial Court. How sound that objection is I do not know. I have observed, in my small experience of cases in which there have been these wrangles, that the bill of exceptions that goes up to the Supreme Court is very likely, after all, to contain all the evidence, except that it does not take the form of question and answer, and even then such bills are likely to contain liberal verbatim extracts from the record. I often wonder whether the Supreme Judicial Court would not save a great deal of time in reading the record as it stood over the record as finally presented by counsel in a case of this type. I think, too, that when we stop to consider the difficulty the Supreme Court would have in dealing with these long records, we must remember that in all probability the system of the whole record going up to the Supreme Court is bound to be adopted in any event. I think that is likely to be the natural evolution of the strong sentiment which is growing in this country, that the question of whether the exception should be sustained or not should depend not upon whether it constitutes a mistake which might have been prejudicial but upon the question of whether injustice has been done upon the whole record.

There are, of course, other remedies for this condition of affairs which might be suggested. We all know that a statute was passed some years ago which gave the Court the power, if counsel did not agree within three months, to send the whole case up on the record. But the attitude of the Supreme Court in the matter has been such that the justices have hesitated to send up the whole record under those circumstances.

Before sitting down after making these remarks I want to digress one moment and to call attention to the fact that the discussion of this subject, like the discussion of most legal subjects, brings you back to one point, and that is that something has got to be done to relieve the Supreme Judicial Court and to reduce to a minimum the amount of time which the Supreme Court now spends on certain purposes and which could be saved.

Mr. BAILEY: Mr. President, the evil which has been alluded to apparently is not confined to Massachusetts. Some ten or fifteen years ago I was trying a case of contract before a jury in Rhode Island, and it was a case which was bound to go to the Appellate Court, and I found that in Rhode Island it was the practice to have the stenographer write out, as we do, the evidence, and that whole typewritten record went to the Appellate Court, so that Court might be sure that it had the case before it on precisely the same state of facts as existed before the trial court. Apparently in Rhode Island they had found, as we have found, that the case presented by a bill of exceptions is oftentimes very different from the case which was tried in the lower court. One counsel or the other succeeds in getting a bill of exceptions which does not clearly show the case as it was tried. Their solution of the problem was to carry up the case exactly according to the whole record, thereby saving any wrangling about bills of exceptions or what should go in or what should go out. In the State of New Hampshire about the same time I happened to be trying one or two cases and I discovered there that while they helped the Appellate Court by what they called a "case," or a "case stated," yet it was a part of the practice to hand up to the justice who was going to write the opinion the whole record as it was in the lower Court. That, I think, did not have to be printed, but he would refer to it as he desired or as counsel required or invited, so that you could be sure that when you got up your brief you did really have before the Court the whole record as it existed in the lower Court. Of course in New Hampshire they let you go up as often as a question arises. They are not embarrassed by the unwritten rule

that exists in Massachusetts that you can only go up when you are ready to go up once for all. They find that it helps to go up as often as a case arises, and then that may or may not terminate the whole case: oftentimes it does. But the other aspect of the case is a little different from Rhode Island as it was ten years ago and as it was in New Hampshire ten years ago; but they accomplish the same result, perhaps. They had a short printed record with a right in the upper Court to look at the complete typewritten record.

Mr. ENSIGN: Mr. President, with my experience before the Supreme Court, which has not been very much, because I have been one of those lawyers who could generally settle my cases, — after a practice of fifty years my experience has been that I could make favorable settlements either for the plaintiff or for the defendant. In the few cases I have had in the Supreme Court, both in this State and in Connecticut and somewhat in New York, I have come to the conclusion that there is something in this and that it would be better to get the whole case before the Court. The only question in my mind is this, and I would like to ask the gentlemen who have just spoken what the feeling of any of the judges is — whether they feel that it would aid them in making a correct decision to have the whole record before them and not a partial record. I would like some information if the gentlemen have it.

Mr. THAYER: May I offer a suggestion at this point? I feel strongly that it is precisely the point where the feeling of the judges is not controlling. If it is true (though I believe it is not) that the present system is better for the Court, then there is a clash between the interests of the judges and of the Bar; and as the determining consideration in such a clash must be what is best for the community, we ought to make a stand for what we believe to be right. If a change is needed, and this change means added work for the judges, it is work of which they should not be relieved because it properly belongs to them. I think it can be shown not only that the present system is an evil, but also how it came about. We are all familiar with situations where what was appropriate and necessary at one state

of development becomes with changed conditions a mere anomaly, which remains only through inertia and the strength of custom. In a small office, for example, you start with certain customs about filing papers and the like. Then the business grows to a point where these customs do not fit in the least; but they persist from mere force of habit, although a stranger looking at things with an impartial eye would deem them quite absurd. At last they are changed, but they continue much longer than they should.

So it is with bills of exceptions. They go back hundreds of years, beginning at a time when there were no such facilities as we now have. The facts must of course be got into the record somehow; and when there were no stenographers you had to go to the judge's notes. This was the situation in Massachusetts fifty years ago. I remember Judge Gray's telling me that very early in his career as a judge he found the wrangles between counsel so interminable and unprofitable that he adopted a fixed practice of writing the bill of exceptions himself, and wouldn't hear counsel on it at all. He had to sign it and he took the responsibility. But nowadays the whole matter is simplified because we have an exact official record made by a stenographer. This being so, the notion that lawyers are to sit down and waste a hideous amount of time and temper in preparing a second-hand story of the trial — a story which may possibly be the truth, but probably is not — engaging consciously or unconsciously in a struggle to see which can get the most color into it, instead of having the true story of the trial go first hand to the Court, seems to me a mischievous anachronism. Its evils are manifest. It means large expense to the parties in the time of counsel. It means grievous delay — one of the most notorious delays of litigation. And all this time and money are spent in producing something which is bad when you get it. For, in a judicial search for the truth, just as in any other, the best thing is going to the sources first hand; and it is undesirable to substitute for these a made-over statement, and one which is too often colored at that.

Of course the Courts should not be subjected to the

annoyance, and the parties to the expense, of a slovenly and swollen record full of irrelevant matter. Often it will be unnecessary to present a great part of the testimony. Counsel should take pains to put the record into proper shape by cutting this out, and the trial judge should control them if they do not. But what testimony *does* go up should go up as it was given, both in its order and in its form, unless it is on a matter of such minor importance or so easy to summarize that counsel of their own accord and without constraint agree on a substitute. The vicious point of our present system is the insistence on "narrative form," instead of reality. And I believe that our Court's insistence on this form is largely the result of mere tradition, and that if a better sort of record were substituted its advantages would soon prove to outweigh such aid as comes from mere brevity, attained at the price you pay for it under the present system.

The inconveniences, too, of a long — even a very long record, I believe are much exaggerated. On this point I can speak in a small way from personal experience, for after leaving the Law School I served for a year as secretary to a judge of the Supreme Court at Washington. The records there are often monstrous in size, and frightful to the inexperienced eye in their complexity. When I would pick up one of these two-thousand page records I used to wonder how any human being could ever find the material facts. It seemed to me a kind of miracle that the judge knew so well how to turn to the right spots, and get together the essential facts without delay or trouble; yet before the year was over I had acquired a good deal of knack in doing this myself. And the cases that go to the Supreme Court in Washington — Interstate Commerce cases, Spanish land titles, and many others, are on the average far more complicated and extended in their facts than those which come before a State Court.

It comes down, I think, just to this. The judges are entitled to a proper record, and it is our duty to give it to them. But a proper record consists in a verbatim transcript of the material things said at the trial, and not in a *descrip-*

tion of those things in the language of others. The difficulties of discovering the material facts in such a first-hand record are, I am confident, much exaggerated, especially when you consider the help in doing so that is given by a proper brief; and such difficulties as remain are properly incidental to the judicial lot.

Mr. E. A. WHITMAN: Mr. President, I have spent many years' practice in the vain endeavor to get as much compensation out of the case as the stenographer got. And I am a little alarmed at this prospect of having an impecunious party cut off from any appeal unless he is able to pay for the writing out of the stenographer's record for the Appellate Court. I should like to know how that evil, if I may be permitted to call it so, can be handled.

Mr. WARE: You have got to have it under the existing system. If you don't agree you have got to print, and if you do agree there is nothing to talk about.

Mr. WHITMAN: Well, if I may recall the history of that statute with a personal allusion, that, I think, was passed at the instance of Mr. Justice Bishop, who I think we may all say at times had difficulty in coming to a conclusion when there was a difference of opinion between counsel, and to relieve just that particular difficulty, and I do not think it has ever been taken advantage of to any extent.

Mr. THAYER: It has got to be in the last analysis; there is no alternative.

Mr. WHITMAN: Unless the justice does what he thinks they ought to do — takes the position of Mr. Justice Gray and settles that question himself, most of them being highly reluctant to do that.

Mr. THAYER: They never would write the bill of exceptions to-day.

Mr. ELLIS: Regardless of the statute I do not see how Mr. Whitman gets over that dilemma under the present condition of affairs. If he has counsel on the other side who are courteous and ready to assist him he can get a bill of the type he wants; but if he has not, regardless of the statute, he is very likely to get a bill of exceptions in the end which practically contains the whole record, it

seems to me. At all events that has been my unfortunate experience on occasions.

Mr. WRIGHTINGTON: I think Mr. Whitman's suggestion has not yet been fully met. Apparently it is possible under our present practice, if counsel are courteous and fair, to prepare a statement of the case that can be printed for the impecunious client at small expense. The proposed plan would necessarily eliminate that; it would be necessary to print the entire evidence, even if counsel could agree upon a statement of the case for the Court.

Mr. THAYER: It could never be necessary to print the entire evidence under any rational system. For instance, if you had a three-weeks' tort case of which two weeks went to damages and one week to liability, and the only exceptions touched liability, no rational system would force the party to print the unnecessary evidence. In other words, any rational system would always leave to the judge a power and a duty to prevent imposition by forcing unnecessary portions of the record to be printed. But the essential difference, I take it, between the sort of system which Mr. Ellis proposes and our present system is the difference between taking the question and answer and forcing the parties to make a compact new narrative in the *oratio obliqua*, and understanding that it was a question of printing so much of the testimony as was necessary to present the questions fairly to the Court.

Mr. JOHN C. HAMMOND: My mind has run towards the same condition that Mr. Whitman has mentioned, and of course Professor Thayer's suggestion that some parts of the record should be taken out seems to me to be in line with the practice now. If parties do not agree, the parts of the record that relate to a particular exception are brought together; but in almost every case, especially tort cases, there is so much in the full stenographer's report that is entirely foreign to the question of law that is to be decided, that it is a serious question whether the burden on the litigants will not be greater than any advantage to be gained. It had not been impressed upon my mind as it has on Brother Bailey's, who has had a more frequent experience

in bills, that the bill does not fairly represent the case. Lawyers who present the case and the judge who tried it, it seems to me, ought to be expected to present a fair view of the matter to the higher court. Of course the Courts are coming more and more to consider the question whether the error is merely technical or whether it is prejudicial error. But the suggestion here made, that it should be competent for the Court of last resort to have before it a typewritten copy of the whole evidence if they wish, removes all the objections that are here made. The necessity of changing our methods in bills of exceptions has not emphasized itself on my mind as much as it has on some others.

Mr. GRINNELL: Mr. President, it seems to me that it is not necessary that such a plan as suggested should involve in every case the writing out and presentation of the full case to the full court. If counsel happen to be sufficiently courteous and good-natured and agreeable, they can agree on a brief statement of the case just as well where the practice is otherwise as where it is limited by the present fixed system. That, as I understand it, is the present English system, and except in the House of Lords, all cases on appeal with very few exceptions go to the Court of Appeal without printing, and where they wish to reduce the case to a brief statement they do so, and where they wish to refer to something that is not in that statement they do so and resort to the record or the stenographer's notes or something of that kind. Counsel would be careful as they worked into the system to pick out and present the important points in their case, and if there were some matters which were omitted they could refer to them and verify the reference by the record itself. There is, as Professor Thayer has pointed out, a formal habit which has grown up and which appears in the opinions of the Court, of referring to bills of exceptions as expressions of truth, and that of course is true to a considerable extent, but I think it is a commonplace at the bar that the man who draws the papers generally has some advantage.

Mr. FORBUSH: Mr. President, I have been following, as I think we all have, the discussion with a good deal of

interest. It seems to me that the objections to the present method simmer down very largely to the fact that we are required now under the rules to present the case in a narrative form and not by question and answer. Now as to the expense of sending up the record, if counsel agree, as has already been stated, it is easy enough to get together on narrative form of bills of exceptions. If counsel are not courteous and if counsel insist that you are not stating your side of the case correctly, then you have got to have the evidence written out, and you have got your whole record then written out. You have not got it, of course, in the printed shape for the Supreme Bench, but having your record all written out counsel could not refuse to agree to such questions and answers as were pertinent to the issue. And it seems to me that if you have that requirement stricken out of the present rules of the court, that the bill of exceptions must be presented in narrative form, and not by question and answer, you have taken the longest step possible to eradicate the difficulty which, we find in our active practice to-day, arises in taking the real case up to the Supreme Court. I think that perhaps it might be well to go one step further and say that despite any objections on the part of the Supreme Bench, if counsel on both sides agree that the entire record ought to go up, and are willing to pay the expense of having it written out, and are willing to pay the expense of having it printed, they should have that privilege. I think all of us who have had the experience of sitting as auditors and masters where the testimony is taken by a stenographer find that we can very readily in reading the case over pick out those facts which are salient and which we need in making our report. Even if the Supreme Court has not in the first instance heard the testimony, I think they would have very little difficulty in getting at the salient points in the case if the entire record went up. But the real difficulty, I think, as stated, is that requirement that the case should go up in narrative form. I think that might be obviated by a slight change.

Mr. Clifford S. Anderson: That I have no well-con-

sidered opinion on the subject will appear from the fact that I would like to make two suggestions, one in favor of the change, and the other somewhat on the other side. One of the speakers last night spoke of a certain act of the legislature as placing a premium on slovenly pleading on the part of the district attorney. With the same degree of exaggerated comment I think we might say that this plan might place a premium upon the careless trial of cases in the Superior Court. The individual litigant runs the risk of the result of lack of intelligence or of negligence or of other fallibility of his counsel, but he has chosen his counsel and must abide the consequences. It does not seem unfair to say that the litigant when he goes to the upper court must there incur the same risks which he incurred in the trial court, which may result from the fact that his counsel is not able to keep out from a bill of exceptions a colorable statement in favor of the opposing side.

The other suggestion I have is this — that the Courts of to-day are striving for more elasticity, perhaps partly through an endeavor to reflect the social conscience of the community. It is very likely that an elasticity will be given to the Appellate Court in its functions by presenting to them the entire record of a case, and it may well happen that the Court in its desire to bring about substantial justice may not decide the case upon the points which seemed important to counsel and were commented upon by them in the brief, but may seek somewhere else in the record some loophole which may enable them to give a decision which they think is in accordance with the spirit of the time, but which will be a surprise to both counsel, and of a nature which they could not advise their clients to expect. This elasticity may or may not be an advantage, but it seems to me the obvious result of the system suggested.

Mr. GRINNELL: I would like to add one more word. So far as the additional expense is concerned, it does not seem to me necessary that if the whole record is available for the Court above, it should all be printed. There is no occasion for having a full transcript of the evidence by question and answer, and also paying the expense of printing that. It

seems to me that if this more elastic system of records, if I may so describe it, were adopted, as the system came into practice, it would tend probably to reduce the expense of appeals. And as to the difficulty and ineffectiveness of the plan, it works and has worked successfully, as I understand it, in the English courts for a good many years. If there is something which they wish to refer to, they send for it, and the argument of an appeal is more or less of an informal discussion between court and counsel, Consultation goes right on in the same room and in most cases the decision and opinion is announced orally at the conclusion of the argument, without the Court's retiring from the bench. It is true that the English judges have the assistance of competent "devils," and are familiar with the contents of the record before the argument, but some such plan might also be considered by our judges.

Mr. BAILEY: Just a single word. Our president in his address this morning suggested that three judges were a sufficient number for the Appellate Court. Of course we have got used to that in the United States Circuit Court of Appeals. We do not, I think, any of us who practice down there, feel that we lose anything by having an appellate court of three members rather than an appellate court of five members, and it well may be that as things go on we shall come to that in Massachusetts in our Appellate Court. Now, if you have an appellate court of three members, as they do in England, it is not so expensive to make three typewritten copies of the record. It is not a great hardship to say to counsel, "You shall prepare an index to the record." In the United States Court that again is a common practice. The clerk has to make up an index to the record. If we may have — we do now if we like — a bill of exceptions or a short statement of the case, with a right to send up the whole record in typewritten form, which is the New Hampshire method, it seems to me that that would really accomplish the whole thing. One objection to a short form of record is that the lawyer at the time the record is made up conceives questions of law to be so and so. And when he comes to get really down to his final

work on the case he finds that there were other serious questions of law in the case which he had not thought of, and which he has lost the benefit of, because there is no longer access to the complete record. In New Hampshire that would not be so. The whole record is available, and he may go back to the whole record and invite the attention of the Court to portions which are important. I do not believe it would be necessary to print the entire record, but typewriting, in my mind, is practically as good as any form of print, and it would accomplish the whole purpose if the full court had access to the entire record written out in typewriting.

Mr. WILLIAM A. DAVENPORT: Perhaps some of the experiences which I have had may be interesting to the Association. I tried a case last March, and after the case was ready for the jury, or before the arguments, the attorney on the opposite side requested the Court to direct a verdict for the defendant. The Court refused to direct the verdict, submitted six questions of fact to the jury, the jury returned answers to those six questions of fact, and then the Court directed a verdict for the defendant, and made a report of the case under the 1913 statute. I filed a brief statement to go with the report and assumed that that would be all that there would be to it. When we went before the Court to have him approve that brief statement, the attorney on the other side said that he had requested the Court to direct a verdict for the defendant before the case was submitted to the jury, and therefore he demanded that the whole evidence be reported. I strenuously objected and said that all there was to go up was what was on the report. He did not agree. The judge very kindly ordered that the whole case be reported to the Supreme Court, and I asked him to append at the end that that was at the request of the defendant's counsel, which he did.

Now, I have been in practice about eighteen years, and have been unfortunate enough to have to go to the Supreme Court on a great many bills of exceptions. During that time, upon three occasions, I undertook to file exceptions without the stenographer's report. In each instance the

Court ordered that I get a copy of the stenographer's report. So now when I want to go up on a bill of exceptions I don't wait for the Court to order it, I order the stenographer's report and proceed accordingly. That is the way that this works out in practice. There may be attorneys in some places — I don't know where they are, I have never happened to meet them — who are kind enough and courteous enough to agree upon a bill of exceptions such as the excepting party desires to have go up, but if they do exist I don't know where, I have never happened to meet them. And the result is, to begin with, that in my practice — and I have been to the Supreme Court a great many times, a great many times more than a man of my age ought to have been there — I have always had, when I was the excepting party, to furnish the evidence to the other side; I have never failed to make the other side furnish me the evidence — as a matter of courtesy (laughter) — and they have.

Now, I am going a little further in my experience in this case to show the expense in the first case which I spoke of. Our clerk of the courts, unlike the clerk in the City of Boston, as I understand, assumes that the exceptions as allowed, or the report as allowed, must be copied by a clerk in his office, and that the original files must be kept in his office. So in this last case the stenographer's report of the evidence cost my client about $60; the copy of the report made in the clerk's office cost me $23.50; the printing I have not as yet received the bill of, but I should guess from the report that it would probably be around $30 to $35. Now, under this system which is suggested I might at least have saved the $23.50 and the cost of printing, and so the suggestion which had been made here relative to the typewritten report going to the Supreme Court, appeals to me very strongly. Of course in the United States courts we have to get the whole record printed, and that is somewhat expensive. But I see no reason why the Supreme Court should not accept the typewritten report or why the questions which are to be raised in the Supreme Court should not be raised on the stenographer's report. I believe it

would be a great saving to litigants, a great saving of time to attorneys, and certainly an enormous saving in expense.

The PRESIDENT: If I may from the chair make a single suggestion of a practical nature, I should like to ask you how the expense accumulates. In the first place, the taking of the testimony by the stenographer is paid for by the County. In the second place, if you are going to carry your exceptions, a copy of the testimony has to be paid for by somebody. Then the question arises whether that copy should be printed and sent up or not. It costs something to print it. Printers' bills are comparatively low. But in order to reduce this to the narrative form, now required in bills of exceptions, it requires the labor of three men of rather a high character, two counsel at least, if not more, and the judge, and leads to infinite delay, infinite expense, and considerable loss of temper. And the practical question is whether the expense of those three men is not greater than the expense of the printer in printing the entire record. That is the practical question.

In the next place, judging from information and experience, I had the privilege, or my office did, of winning a case, and the other side decided to carry it up, and the judge who had decided in our favor said, "Whenever you gentlemen agree upon a report I will sign it;" and the other side fell into the easy position of refusing to agree on a report. Nothing would persuade that judge to take any other course, and that case stood along for eighteen months in the vain effort to make the man who had lost agree that his case should go up. Now that is something which is a grave abuse. I have got now a case which was tried last May, and if I am any judge the exceptions could be presented really in a page. Counsel on the other side has gone to work and made an elaborate digest of the evidence, covering perhaps one hundred and fifty pages of typewritten manuscript, and somebody has got to go through that to be sure that it is an accurate presentation of the case. And when we get that up the Court will ask, "What on earth do you bring up all this matter for, for the purpose of deciding the perfectly simple questions that these exceptions pre-

sent?" Now my impression is that it is a mere matter of economy; that it is a great deal cheaper to pay a printer than to pay two counsel and the Court. It ought to be. I shall be sorry when the standard of professional labor falls so low as that of a compositor. And in addition to that it is an everlasting saving of time, and practically it brings the matter up in better shape. Of course in the Federal courts the entire thing is printed, and I think a consideration which applied in the case of a claim for a jury might apply here. When I first came to the Bar men had a right to waive the jury, but if you thought you didn't want a jury you went to the other side and suggested that he waive the jury. He said, "If you don't want a jury it must be that I do," and consequently they didn't agree. Then the system was changed and each man had to decide for himself whether he wished a jury. Each man deciding for himself, the consequence was that a great many cases were tried without a jury where a jury would never have been waived if the party had decided in the old-fashioned way. I think the matter could be worked out in a similar fashion if the typewritten record were submitted independently to counsel, and each were asked to strike out what he didn't want. It would be very easy to reduce the matter. It seems to me the Legislative Committee might very well be asked to formulate some bill and present it at a meeting of the Association for further consideration.

Mr. CLAPP: I would like to know what you personally would say to Brother Bailey's suggestion that the whole typewritten record be sent up.

The PRESIDENT: It is not so much what I should personally say, but what the Court would say. The Court would say they would rather read it in print than undertake to turn over a typewritten record. That is what I think they would say. It is what I should say if I were on the Bench.

Mr. CLAPP: I have much sympathy with Professor Thayer's idea that they ought to do what we require them to do.

The PRESIDENT: That may be, but reading printed matter is much easier for the eyes than typewriting.

Mr. THAYER: Certainly no one could undertake to arrange the details of a plan offhand at a meeting like this. Those of us who take the view that I have been expressing would be satisfied with a declaration that the existing system was unfortunate, out of date, and could be improved. The details of the improvement are obviously, as the Chairman suggested, for a committee. For the purpose of presenting that idea in accordance with the President's suggestion, I move that this subject be referred to the Legislative Committee, with the recommendation that it struggle with the problem.

The PRESIDENT: And formulate a bill.

Mr. ARTHUR LORD: Mr. President, may I add an amendment to Mr. Thayer's motion —that the Committee report a bill if they deem it advisable, and that that bill and the reasons which lead them to reaching the conclusion be printed and sent to the members of the Association, so that the Association another year shall proceed upon some definite measure and the members will be advised as to the arguments.

Mr. ENSIGN: I second that amendment.

The PRESIDENT: It is moved and seconded that the Legislative Committee be requested to prepare such a bill as they would recommend for the consideration of the Association, and have it printed with the reasons for the change which they recommend, and to distribute it among the members of the Association.

The motion was put to vote and unanimously carried.

THE ANNUAL DINNER.

At the annual banquet Hon. Moorfield Storey was the toastmaster and the speakers were Hon. Arthur P. Rugg, Hon. Thomas J. Boynton, Hon. Roscoe Pound, and Hon. Leslie C. Cornish.

The address of Hon. Arthur P. Rugg follows:

ADDRESS OF CHIEF JUSTICE ARTHUR P. RUGG.

Members of the Massachusetts Bar Association:

The warmth of your greeting shows me that I have not yet worn my welcome out. I accepted the invitation to speak on this occasion with many misgivings because of the very kind indulgence that you have shown me on several recent occasions.

Mr. President, permit me for a moment to lay aside the garb of guest and to assume that of host, and let me say to you, sir, and all the members of the Massachusetts Bar Association, that you are most welcome to this my home city and native county. We of the Worcester Bar esteem it a great honor that you have selected our city for this your annual meeting, and let me remind you that Worcester to the lawyer is no mean city. The traditions of the Bar of this city and county are of the rich heritage of the members of the Bar of the Commonwealth. Those of us who have practised in the Worcester Court House have learned to look to the elder Levi Lincoln, Attorney-General in the Cabinet of Jefferson, as the patriarch of our Bar. And then we have learned to look upon his son, the younger Levi Lincoln, a Justice of the Supreme Judicial Court, Governor of the Commonwealth for a period longer than any of his predecessors or successors under the Constitution, and for nearly a generation dispensing a generous hospitality which was becoming a first citizen of the heart of the Commonwealth. And then the names of Thomas

and Merrick and of Senator John Davis, and the more recent Senator Hoar, are those to which not only the Bar of Worcester, but the Bar of the whole Commonwealth look with pride. And I mention these names in order that we may bear in mind that the lawyer of the old day of the Commonwealth was not merely a man learned in the law — he was, and was expected by his fellow-citizens to be, the leader in civic as well as in legal matters. This city of ours has become one of the great manufacturing centers of the Commonwealth and of the country, and it has grown through the sagacity and wisdom of men of business, assisted by most intelligent and skilled artisans, so that we have had in this community that fine correlative of members of the Bar not only observing the duties of their oaths of office, but observing that wider sphere of duty which every member of the Bar owes to the community in which he lives — that he may establish a reputation of which his fellow-citizens will be proud, whether they be members of the Bar or not. And one sometimes feels that the criticism which comes to the administration of justice — because we are all ministers of justice, members of the Bar no less than those of the judiciary — one sometimes feels that the criticism upon the ministers of justice has its rise in part because we of the Bar have forgotten this wider obligation, this duty not only to be learned in the law, but to be pillars of strength in the community and standing for that which was highest and best in the civic and educational and political and religious life of the community, as well as in our own beaten path.

First, let me congratulate the members of the Massachusetts Bar Association on the admirable work which they have already done — which their officers and committees have already done in the brief period of its existence. It seems to me that the report of the legislative committee which has been in the hands of all of us for a few days shows a very admirable grasp of an important function of a State Bar Association. One cannot read that report without understanding that the members of this Association realize that there are two functions of a State Bar Association respecting

legislation — one, to formulate legislation, to discuss and prepare bills which shall render easier and more efficient the administration of justice; but there is also a second function scarcely less important, and that is to oppose the enactment of bills which ought never to become laws, and in this respect your committee, as is shown by its report, has done admirable service.

It is said that the members of the Bar owe it to the community to see to it that people should be taught the nature of the institutions under which they live. There is a further, and perhaps no less important and yet somewhat more circumscribed duty, which arises to us in Massachusetts. We sometimes wonder, as we read the comments upon the administration of justice, and upon the fabric of the law in newspapers, and hear intelligent discussion among our friends of that subject, if there is any appreciation that State lines still have some significance, and that the administration of justice in the Commonwealth of Massachusetts may not necessarily have all the errors and all the misfortunes which can be garnered by industrious investigation of all the other States of the Union. One would imagine oftentimes in reading the extensive publicity which is given to a miscarriage of justice occurring in some other State, that Massachusetts lived under the same unfortunate state of law.

Now I want to ask your attention for a moment to what has been accomplished in a period of a quarter of a century in the amelioration and in the improvement of the fabric of the law of this Commonwealth. As we were sitting at table Mr. Storey asked me if our Court ever had any criminal cases to consider nowadays, and recalled the experience of his earlier days when an entire week was given during one, and perhaps more, of the sittings in Boston to the consideration of criminal cases. I think the year in which I was admitted to the Bar the last volume of the reports contained thirty-nine criminal cases, many of them for infractions of the liquor law. The last volume of the reports, which I examined with this end in view, which is within the last three or four volumes, had three criminal cases.

Now why is it? It is because the wisdom of the Massa-

chusetts Legislature has passed two statutes: one, the simplification of the criminal pleading act, which has rendered impossible the raising of so many technical and beautiful questions of law, but questions of law which have rather more to do with the sharpened intellectual achievements of the lawyer than the accomplishment of the ends of justice. So that we have a simplification of the Criminal Pleading Act, under which the rights of defendants are fully protected to the extent of advising him of the crime with which he is charged, and yet the District Attorney is not beset with snares and pitfalls at every turn in order to draft an indictment which may escape the vigilance of a learned defendant's attorney. And then a second statute which has had a very salutary influence is one which authorized the sentencing of those convicted of crime, exceptions to the contrary notwithstanding, unless the Court certified that the exception was one which had merit. That, from the standpoint of the lawyer, I think, sometimes does not quite impress us as much as it ought. When the act for the simplification of criminal pleading was passed it was jocosely described as one which tended to promote slovenliness of thought on the part of district attorneys. But nevertheless it has had a tremendous influence in enabling us of Massachusetts to realize a swift and comparatively certain prosecution and punishment of those charged with crime, and it enables us to say to our neighbors of the laymen that the criticisms which are rife in many other States cannot with justice be applied to Massachusetts. These are two of the most important acts which have been passed in the last quarter of a century.

We were one of the earliest States and have been for many years one of the few States in the Union to have an Employers' Liability Act. The importance of that in its economic and legal aspects has not been so much, I think, the benefit conferred upon individuals who have profited by it as it has been in the broader aspects of demonstrating that the Employers' Liability Act, after all, was not designed and was not capable of adjusting with justice the relations between employer and employee. So that just within that

quarter of a century period we have had, and have been one of the pioneer States in the enactment of a Workmen's Compensation Act, which has placed upon an entirely different basis the relations of employer and employee, and under the very admirable administration of the Industrial Accident Board, it appears to be working out a satisfactory solution of the very difficult problem of accidents arising in the course of industrial employment.

Then beside these we have had several acts passed for the purpose of unifying commercial law throughout the country: the Negotiable Instruments Acts, the Warehouse Receipts Act, the Bills of Lading Act, and the Sales Act. These are tremendous steps forward in the administration of law and in adapting the law of this Commonwealth to the needs of the commerce of the country.

It is, it seems to me, a part of the obligation which the attorney, a public officer and not a mere private citizen, be it remembered, — because we cannot have it called to our attention too often that the member of the Bar alone of all the professions is required to take an oath of office and becomes in a sense a public officer with public duties, and he is not at liberty, therefore, to pursue his calling with an eye single to his own preferment and his own profit — it is, I say, part of the duty of that public officer to make it known to the people of the Commonwealth the kind of administration of law which we have in the Commonwealth and the fabric of the law which we have, and how it is advanced and how the wisdom of our lawyers and our legislators has given us the opportunity of advancing beyond these unfortunate incidents in the administration of justice which occur in some jurisdictions. And that duty each member of the Bar, each member of our profession, can perform best among his own circle of lay friends, in order that there may be diffused through the community at large a respect for the administration of law and a respect for the improvement of law.

These statutes to which I have referred, and there are some others, — the Torrens Act, for instance, the establishment of the Land Court and the great advance and improvement

in the Real Estate Law which has come by reason of that act — these statutes have been passed without the aid of a State Bar Association. They illustrate and point the opportunity which exists before this Association, comprehending all the Bar of the Commonwealth and carrying the weight which the legal profession, bound together for the accomplishment of the beneficent end of improving in other respects the administration of law — it points the way for an ever-widening and useful service for this Association.

Necrology.

CHARLES H. BLOOD was born in Fitchburg in 1859, was educated in the local public schools and was graduated from Harvard College in 1879. He was graduated from the Boston University Law School in 1883 and was admitted to the Bar in the same year. He was appointed special justice of the Fitchburg police court in 1888, which position he retained during his life. In 1896 he was president of the common council, he served in the Massachusetts House of Representatives in 1898, 1899, and 1900, and in 1903 was elected mayor of Fitchburg. He died April 3, 1915.

WILLIAM HENRY FOX was born in Taunton, Massachusetts, August 29, 1837. He graduated from Harvard College in 1858 and received the degree of A.M. in 1861, when he was admitted to the Bar. He was justice of the municipal court of Taunton from 1865–1875, was mayor of Taunton in 1873, and was judge of First District Court of Bristol County from 1875 to the time of his death, May 14, 1913. He was also president of the Bristol County Savings Bank, trustee of the Boston Investment Company, trustee and treasurer of Wheaton College, and trustee of the Taunton Public Library.

JOHN CHIPMAN GRAY was born in Brighton, July 14, 1839. He graduated from Harvard College in 1859 and from the Harvard Law School in 1861. He served in the Civil War, finally becoming major and judge advocate of the United States volunteers on the staffs of Generals Foster and Gillmore. After the war he began practising law in Boston. In 1869 he became a lecturer in the Harvard Law School and in 1875 he was appointed Storey professor of law and in 1883 was promoted to the Royal professorship,

which for many years was associated with his name. In 1904 he received the degree of LL.D. from Yale University and in the following year he received a similar degree from Harvard. At the time of his death, February 25, 1915, he was a member of the firm of Ropes, Gray, Boyden & Perkins.

Mr. Gray published several important law books. The first edition of his "Restraints on the Alienation of Property" was published in 1883, the second in 1895. "The Rule against Perpetuities" has had three editions, in 1886, 1906, and 1915. The "Nature and Sources of the Law" was published in 1909. He also published six volumes of collected cases on Property.

MALACHI L. JENNINGS died March 12, 1915, at the age of 42 years. He was born in Boston and after graduating from the public schools was employed by Chickering & Son, piano manufacturers. After a course in the evening high school, he entered the Boston University Law School, from which he graduated in 1896. He studied also in the office of the late Owen A. Galvin and has since been associated in practice with W. T. A. Fitzgerald and Stephen A. Jennings. He was a member of the State Ballot Law Commission and former secretary of the Democratic City Committee.

CHARLES T. LOVERING died February 9, 1915. He was born in Dorchester, September 23, 1846, and was the son of Joseph S. Lovering and Mary Lovering. He prepared for college at the Boston Latin School and graduated from Harvard College in 1868. Afterward he spent two years in the Harvard Law School.

He married Marian Shaw Sears of Boston in 1878 and they had four children, Charles T. Lovering, Jr., Joseph S. Lovering, Richard S. Lovering, and Mrs. André William Reggio.

JAMES JEFFERSON MYERS was born in Frewsburg, New York, November 20, 1842. He was graduated from Harvard College in 1869, and from the Harvard Law School in 1872, and began practising law in Boston in 1874. In 1888 he was prominent among those who organized the Harvard Republican Club. He was elected to the Massachusetts House of Representatives in 1893 and served continuously to 1903, being speaker for the last four years of his service. He rendered notable service in legislation against stock watering schemes and worked hard for the Metropolitan Park Bill and other measures affecting public interest. He died April 13, 1915.

WILLIAM H. NILES was born in Oxford, New Hampshire, December 22, 1839. He received his education in the public schools and under private tuition, and also spent three years at the Providence Conference Seminary, East Greenwich, Rhode Island. He read law in the office of Caleb Blodgett, Jr., and was admitted to the Massachusetts Bar in March, 1870. Since that time he had carried on a general law practice, and at the time of his death, September 23, 1914, was head of the law firm of Niles, Stevens, Underwood & Mayo of Lynn.

Mr. Niles was a member of the Lynn School Board for four years and had been president of the Essex Bar Association for the past eleven years. He was a delegate to the National Republican Convention which nominated William McKinley.

JOHN B. RATIGAN was born in Worcester, December 22, 1859. He graduated from the classical high school, Holy Cross College and the Boston University Law School, and was admitted to the bar in 1883. He had been a member of the Worcester School Board and of the Worcester Board of Aldermen. He was appointed a Justice of the Superior Court by Governor Foss in 1911. He died February 1, 1915.

DAVID FOSTER SLADE was born November 5, 1855, at Slade's Ferry in Somerset, Massachusetts; the son of Jonathan Slade of that town and Emeline (Hooper) Slade of Walpole, New Hampshire. His education, begun in the district school, was continued at the Fall River High School and at Brown University, where he was graduated in the class of 1880.

With the practice of the law as his chosen profession he undertook its study in the office of Morton & Jennings, Fall River. After a year of valuable training under Mr. Morton, Mr. Slade became a student at the Boston University School of Law, graduating in 1883. He was admitted to the Bar on June 6 of that year and with James F. Jackson, then practising in Fall River, a partnership was formed bearing the name of Jackson & Slade; later Jackson, Slade, & Borden. This was dissolved by Mr. Jackson's removal to Boston in 1905. The business continued under the style of Slade & Borden during the remainder of his life.

Elected to the General Court, Mr. Slade served in the House of Representatives for the years 1894, 1895, and 1896, as a member of the Committee on the Judiciary, on Rules, and as House Chairman, in 1895, on Federal Relations. In 1900 he became a member of the Executive Council, where he represented the First District for four years; three of these years with Governor Crane and the fourth with Governor Bates.

A further service to the Commonwealth was in helping to establish the Industrial School for Boys at Shirley. Mr. Slade was made Chairman of the original Commission in 1908 and served for three years. In 1911 the Massachusetts Training Schools were united under a single Board of Trustees and at Governor Draper's request he remained for one year as a member of this board.

He also acted as one of the Grade Crossing Commissioners for the State at Lowell and North Adams.

His death occurred June 28, 1914.

HENRY WALKER was born in Boston, and graduated from Harvard College in 1855. After leaving college he studied law in the office of Hutchins & Wheeler. At the outbreak of the Civil War he enlisted as adjutant of the 4th Massachusetts regiment and later was appointed colonel of that regiment. After the war he resumed the practice of law. He was License Commissioner of Boston from May 1, 1877, to July, 1878, and Police Commissioner from April 30, 1879, to April 22, 1882. During 1887 and 1888 he commanded the Ancient and Honorable Artillery Company. He was for many years a member of the Democratic State Committee. He died at his home in Newton, December 19, 1914.

MEMBERS

Massachusetts Bar Association.

[The Honorary Members are in *Italic* type.]

Abbot, Edwin H.	14 Beacon St., Boston.
Abbot, Edwin H., Jr.	73 Tremont St., Boston.
Abbott, John	53 State St., Boston.
Abbott, Leon M.	934 Tremont Bldg., Boston.
Adams, Edward B.	Harvard Law School, Cambridge.
Adams, Melvin O.	635 Tremont Bldg., Boston.
Adams, Walter S.	South Framingham.
Aiken, John A.	Court House, Boston.
Aldrich, Chas. F.	602 State Mutual Bldg., Worcester.
Alger, Arthur M.	Taunton.
Allen, Claude L.	1054 Old South Bldg., Boston.
Allen, Horace G.	18 Tremont St., Boston.
Allyn, R. A.	Holyoke.
Anderson, Clifford S.	Five Cents Savings Bank Bldg., Worcester.
Anderson, Elbridge R.	84 State St., Boston.
Anderson, Geo. W.	85 Devonshire St., Boston.
Arnold, Edmund K.	16 State St., Boston.
Ashe, Patrick J.	North Adams.
Atherton, Percy A.	30 State St., Boston.
Atwood, Harry H.	Court House, Worcester.
Atwood, Warren H.	Ayer.
Avery, Nathan P.	Holyoke.
Aylward, James F.	Tremont Bldg., Boston.
Bacon, Francis W.	55 Congress St., Boston.
Badger, Walter I.	53 State St., Boston.
Bailey, Hollis R.	19 Congress St., Boston.
Bailey, James A., Jr.	412 Barristers Hall, Boston.
Baker, Chas. F.	Fitchburg.
Baker, Herbert L.	210 Pemberton Bldg., Boston.
Balch, Francis N.	60 State St., Boston.
Ballentine, Arthur A.	84 State St., Boston.
Bangs, Francis R.	18 Tremont St., Boston.
Barker, John	Pittsfield.
Barlow, R. S.	53 State St., Boston.

Barnard, Wm. Lambert	50 Congress St., Boston.
Barnes, Charles B., Jr.	334 Tremont St., Boston.
Barnes, Geo. L.	1054 Old South Bldg., Boston.
Barnes, Jonathan	423 Main St., Springfield.
Barney, C. N.	38 Exchange St., Lynn.
Barry, William J.	Barristers Hall, Boston.
Bartlett, Ralph S.	626 Exchange Bldg., Boston.
Bassett, J. Colby	101 Milk St., Boston.
Bates, John L.	73 Tremont St., Boston.
Bates, Sanford	10 Tremont St., Boston.
Baxter, Charles S.	801 Tremont Bldg., Boston.
Beal, Boylston A.	60 State St., Boston.
Beale, Joseph H.	Harvard Law School, Cambridge.
Beckwith, Charles H.	Court Square Theatre Bldg., Springfield.
Belden, Chas. F. D.	State House, Boston.
Bell, Charles U.	60 Bartlett St., Andover.
Bell, Clinton E.	25 Harrison Ave., Springfield.
Bell, Stoughton	60 State St., Boston.
Bellew, Henry E.	54 Court House, Boston.
Benner, Frank T.	1117 Old South Bldg., Boston.
Benneson, Miss C. A.	3 Phillips Place, Cambridge.
Bennett, Samuel C.	10 Tremont St., Boston.
Benton, J. H.	Ames Bldg., Boston.
Berenson, Arthur	Pemberton Bldg., Boston.
Berenson, Bernard	Pemberton Bldg., Boston.
Berry, Henry N.	85 Devonshire St., Boston.
Berry, John K.	166 Devonshire St., Boston.
Bigelow, Wm. R.	18 Tremont St., Boston.
Bingham, Norman W., Jr.	60 Federal St., Boston.
Bishop, E. B.	54 Devonshire St , Boston.
Blackmur, Paul R.	1147 Tremont Bldg., Boston.
Blake, Wm. P.	27 Kilby St., Boston.
Blatt, William M.	294 Washington St., Boston.
Blinn, George R.	30 Court St., Boston.
Blodgett, E. E.	60 Federal St., Boston.
Blood, Charles W.	60 State St., Boston.
Bolster, Wilfred	Court House, Boston.
Bond, Lawrence	50 Congress St., Boston.
Bosson, Albert D.	73 Tremont St., Boston.
Bosworth, Charles W.	31 Elm St., Springfield.
Bowen, H. Ashley	38 Exchange St., Lynn.
Bowker, Harrison W.	731 Slater Bldg., Worcester.
Boyden, Albert	84 State St., Boston.
Brackett, John G.	53 State St., Boston.
Brackett, J. Q. A.	50 Congress St., Boston.
Bradlee, Edward C.	84 State St., Boston.
Braley, Henry K.	151 Kilsyth Road, Boston.
Brandeis, Louis D.	161 Devonshire St., Boston.

Brannan, Joseph D. . . . Harvard Law School, Cambridge.
Breed, Arthur F. . . . . 7 Water St., Boston.
Brett, John A. . . . . Pemberton Bldg., Boston.
Bremer, Clifton L. . . . 60 State St., Boston.
Brewer, Daniel C. . . . . 40 Central St., Boston.
Brewster, Elisha H. . . . Springfield.
Brewster, Frank . . . . Ames Bldg., Boston.
Brigham, Henry R. . . . 92 State St., Boston.
Brooks, Arthur H. . . . 1020 Exchange Bldg., Boston.
Brooks, Wm. H. . . . . 31 Elm St., Springfield.
Brown, Frederick W. . . 55 Kilby St., Boston.
Brown, George H. . . . Quincy.
Brown, John F. . . . . Court House, Boston.
Brownell, Morris R. . . . 18 Masonic Bldg., New Bedford.
Brownson, Wendell G. . . 31 Elm St., Springfield.
Bruce, Chas. M. . . . . 84 State St., Boston.
Buckminster, Wm. R. . . 450 Tremont Bldg., Boston.
Bucknam, Chas. C. . . . 85 Devonshire St., Boston.
Buffum, Robert E. . . . 934 Tremont Bldg., Boston.
Buffum, Walter N. . . . 45 Milk St., Boston.
Bullock, Chandler . . . 210 State Mutual Bldg., Worcester.
Bunker, Clarence A. . . . 904 Barristers Hall, Boston.
Burbank, Chas. E. . . . 53 State St., Boston.
Burdett, Everett W. . . . 84 State St., Boston.
Burke, Francis . . . . . 53 State St., Boston.
Burke, James W. . . . . 426 Slater Bldg., Worcester.
Burke, John H. . . . . Court House, Boston.
Burnham, Addison C. . . 60 Federal St., Boston.
Burnham, Henry L. . . . 15 State St., Boston.
Burns, Wm. A. . . . . 8 Bank Row, Pittsfield.
Burr, Arthur E. . . . . 15 Congress St., Boston.
Burrage, George D. . . . 84 State St., Boston.
Burt, Frank H. . . . . 806 Barristers Hall, Boston.
Butler, Howard Fulton . . 30 State St., Boston.
Bygrave, H. Robert . . . 70 Kilby St., Boston.

Cabot, Frederick P. . . . 53 State St., Boston.
Callahan, Christopher T. . . Holyoke.
Campbell, Charles F. . . 314 Main St., Worcester.
Carney, Francis J. . . . 141 Milk St., Boston.
Carpenter, Edward N. . . 101 Tremont St., Boston.
Carroll, Francis M. . . . 18 Tremont St., Boston.
Carroll, Frederick A. . . 411 State Mutual Bldg., Worcester.
Carroll, James B. . . . . Court House, Springfield.
Carroll, James E. . . . 60 State St., Boston.
Carter, Albert P. . . . . 60 State St., Boston.
Carver, Eugene P. . . . 110 State St., Boston.
Chamberlain, Albert H. . . 78 Chauncy St., Boston.

Chamberlain, Loyed E.	106 Main St., Brockton.
Chamberlin, Lafayette R.	30 State St., Boston.
Chandler, Albert Minot	701 Barristers Hall, Boston.
Chandler, Alfred D.	70 State St., Boston.
Channing, Henry M.	18 Tremont St., Boston.
Charak, William	75 State St., Boston.
Chase, Frederic H.	Court House, Boston.
Child, Samuel M.	43 Tremont St., Boston.
Clapp, Clift R.	60 State St., Boston.
Clapp, Robert P.	50 State St., Boston.
Clark, Chester W.	62 Equitable Bldg., Boston.
Clark, Isaiah R.	54 Devonshire St., Boston.
Clarke, A. F.	102 Ames Bldg., Boston.
Clarke, George Lemist	55 Kilby St., Boston.
Clarke, Henry Martyn	50 State St., Boston.
Clifford, Charles W.	New Bedford.
Clifford, John H.	New Bedford.
Coale, Geo. O. G.	60 State St. Boston.
Codman, James M., Jr.	87 Milk St., Boston.
Codman, Julian	19 Milk St., Boston.
Coggan, Marcellus	941 Tremont Bldg., Boston.
Cohen, Abraham K.	611 Tremont Bldg., Boston.
Cohen, A. S.	18 Tremont St., Boston.
Coit, George Chandler	Pemberton Bldg., Boston.
Collingwood, Morton	17 Court St., Plymouth.
Colt, James D.	53 State St., Boston.
Colt, LeBarron B.	U.S. Senate, Washington, D.C.
Colton, Charles A.	324 Washington St., Boston.
Conry, Joseph A.	1 Beacon St., Boston.
Cook, Alonzo B.	State House, Boston.
Cook, Clifford A.	Milford.
Cook, Frank Gaylord	10 Tremont St., Boston.
Cook, Otis S.	New Bedford.
Cooley, Robert C.	381 Main St., Springfield.
Coolidge, Calvin	Northampton.
Coolidge, Harold J.	40 State St., Boston.
Coolidge, Wm. H.	State Mutual Bldg., Boston.
Corbett, Joseph J.	Court House, Boston.
Corcoran, William J.	505 Barristers Hall, Boston.
Cotter, James E.	Sears Bldg., Boston.
Coughlin, Richard P.	14 City Square, Taunton.
Coulson, Walter	706 Bay State Bldg., Lawrence.
Cox, Channing H.	426 Tremont Bldg., Boston.
Cox, Guy W.	77 Franklin St., Boston.
Creed, Michael J.	306 Pemberton Bldg., Boston.
Cronan, John F.	Barristers Hall, Boston.
Crosby, John C.	Pittsfield.
Crosby, J. Porter	306 Pemberton Bldg., Boston.

Cummings, James T. . . 56 N. Main St., Fall River.
Cummings, John W. . . . 56 N. Main St., Fall River.
Cunningham, Frederic . . 909 Exchange Bldg., Boston.
Cunningham, H. V. . . . 635 Tremont Bldg., Boston.
Curtis, Charles P. . . . . Ames Bldg., Boston.
Cushing, Livingston . . . 10 Tremont St., Boston.
Cushman, Henry O. . . . 53 State St., Boston.
Cushman, Robert . . . . 95 Milk St., Boston.
Cutting, Louis . . . . . State Mutual Bldg., Worcester.

Daggett, Frederick J. . . 910 Pemberton Bldg., Boston.
Dallinger, Frederick W. . 89 State St., Boston.
Daly, Augustine J. . . . 811 Barristers Hall, Boston.
Dana, Richard H. . . . . 10 Post Office Sq., Boston.
Dana, Wm. F. . . . . . Court House, Boston.
Darling, Chas. K. . . . . Post Office Bldg., Boston.
Darling, Frederick H. . . 1026 Exchange Bldg., Boston.
Davenport, Charles M. . . 53 State St., Boston.
Davenport, Wm. A. . . . Greenfield.
Davis, Charles Thornton . Court House, Boston.
Davis, Harold S. . . . . 53 State St., Boston.
Davis, Harrison M. . . . Ames Bldg., Boston.
Dean, Josiah S. . . . . 60 State St., Boston.
Dearborn, Josiah . . . . 31 Elm St., Springfield.
DeCourcy, Charles A. . . Court House, Boston.
Denison, Arthur W. . . . 75 State St., Boston.
Derby, Charles H. . . . 810 Slater Bldg., Worcester.
Dewey, Francis H. . . . 311 Main St., Worcester.
Dewey, George T. . . . 311 Main St., Worcester.
Dexter, J. P. . . . . South Framingham.
Dexter, Philip . . . . . 40 State St., Boston.
Dickerman, Frank E. . . 18 Tremont St., Boston.
Dickinson, David T. . . . 412 Barristers Hall, Boston.
Dickinson, Marquis F. . . Exchange Bldg., Boston.
Digney, Charles A. . . . 131 State St., Boston.
Dodge, Edward S. . . . 53 State St., Boston.
Dodge, Frederic . . . . United States Court, Boston.
Dodge, Robert G. . . . . 53 State St., Boston.
Doherty, Jas. L. . . . . 31 Elm St., Springfield.
Donald, Malcolm . . . . 84 State St., Boston.
Doran, James P. . . . . Masonic Bldg., New Bedford.
Dow, Rogers . . . . . 15 Congress St., Boston.
Dresser, Frank F. . . . . 808 Slater Bldg., Worcester.
Drury, George A. . . . . Worcester.
Drury, Geo. P. . . . . 89 State St., Boston.
Duane, Patrick J. . . . . 215A Moody St., Waltham.
DuBois, Loren G. . . . . 405 Commonwealth Ave., Boston.
Dubuque, Hugo A. . . . 263 Walnut St., Fall River.

Duff, John . . . . . Court House, Boston.
Dunbar, Frank E. . . . . 521 Hildreth Bldg., Lowell.
Dunbar, James R. . . . Ames Bldg., Boston.
Dunbar, Ralph W. . . . Ames Bldg., Boston.
Dunbar, William H. . . . 161 Devonshire St., Boston.
Dunn, Frederick J. . . . Gardner.
Dunning, James G. . . . 310 Main St., Springfield.
Dwyer, Michael J. . . . Ames Bldg., Boston.

Eaton, Theodore . . . . 31 Milk St., Boston.
Edwards, Winslow . . . East Hampton.
Eisner, Michael L. . . . 24 North St., Pittsfield.
Ela, Richard . . . . . 740 Main St., Cambridge.
Elder, Charles R. . . . . 209 Washington St., Boston.
Elder, Edward E. . . . . 89 State St., Boston.
Elder, Samuel J. . . . . 1104 Pemberton Bldg., Boston.
Eldredge, C. F. . . . . 18 Tremont St., Boston.
Elliott, Richard P. . . . 53 State St., Boston.
Ellis, David A. . . . . 60 State St., Boston.
Ellis, Edward S. . . . . Bourne.
Ellis, Ralph W. . . . . 500 Main St., Springfield.
Ells, John H. . . . . Tremont Bldg., Boston.
Elmore, Samuel D. . . . 53 State St., Boston.
Emerson, A. Silver . . . 18 Tremont St., Boston.
Ensign, Charles S. . . . 205 Sears Bldg., Boston.
Ernst, Roger . . . . . 60 State St., Boston.
Estabrook, Geo. Wm. . . . 1145 Old South Bldg., Boston.
Esty, Edward T. . . . . 340 Main St., Worcester.
Eyges, Leon R. . . . . State House, Boston.

Fagan, Joseph P. . . . . 199 Washington St., Boston
Fallon, Joseph D. . . . . 43 Tremont St., Boston.
Farley, J. W. . . . . 84 State St., Boston.
Farlow, John S. . . . . 92 State St., Boston.
Farrer, J. A. . . . . 73 Tremont St., Boston.
Feely, Jos. J. . . . . 95 Milk St., Boston.
Feingold, Louis E. . . . 421 State Mutual Bldg., Worcester.
Ferber, J. B. . . . . 53 State St., Boston.
Fernald, George H., Jr. . 344 South Station, Boston.
Fessenden, Franklin G. . . Court House, Boston.
Field, Elias . . . . . 141 Milk St., Boston.
Field, Fred T. . . . . Barristers Hall, Boston.
Field, Henry P. . . . . Northampton.
Fish, Frederick P. . . . 84 State St., Boston.
Fisher, Edward . . . . 805 Sun Bldg., Lowell.
Fisher, Frederic A. . . . Sun Bldg., Lowell.
Fitzgerald, W. T. A. . . . Court House, Boston.
Flynn, George A. . . . . 730 Tremont Bldg., Boston.

Folsom, Arthur A. . . . 19 Milk St., Boston.
Forbes, James Grant . . . Paris, France.
Forbes, William T. . . . Worcester.
Forbush, Frank M. . . . 53 State St., Boston.
Ford, Edmond J. . . . . Lawrence.
Ford, Lawrence A. . . . Shawmut Bank Bldg., Boston.
Foster, Alfred D. . . . . 87 Milk St., Boston.
Foster, Reginald . . . . 87 Milk St., Boston.
Fowler, Wm. Everett . . Westboro.
Fowler, Wm. P. . . . . 18 Tremont St., Boston.
Fox, Isador . . . . . Barristers Hall, Boston.
Fox, Jabez . . . . . 99 Irving St., Cambridge.
Frederick, Walter F. . . . 24 Milk St., Boston.
Freeman, Franklin . . . 12 Main St., Leominster.
French, Asa P. . . . . 45 Milk St., Boston.
Friedman, Lee M. . . . . 30 State St., Boston.
Friedman, Simon G. . . . 504 State Mutual Bldg., Worcester.
Frye, Newton P. . . . . 234 Essex St., Lawrence.
Fuller, Henry H. . . . . 911 Barristers Hall, Boston.
Furber, George P. . . . 344 South Station, Boston.

Gage, T. H., Jr. . . . . 808 Slater Bldg., Worcester.
Gallagher, Chas. T. . . . 40 Court St , Boston.
Garceau, Albert . . . . 15 Congress St., Boston.
Garcelon, William F. . . Sears Bldg., Boston.
Gardiner, George N. . . . Masonic Bldg., New Bedford.
Garland, Francis P. . . . Pemberton Bldg., Boston.
Gaskill, George A. . . . Worcester.
Gauthier, Joseph A. . . . 791 Purchase St., New Bedford.
Gaston, William A. . . . Shawmut Bank Bldg., Boston.
Gay, Daniel F. . . . . 622 Slater Bldg., Worcester.
George, Elijah . . . . . Probate Court, Boston.
Gilman, Edwin C. . . . . 29 Milk St., Boston.
Ginsburg, Edward E. . . 18 Tremont St., Boston.
Gleason, Albert A. . . . 60 State St., Boston.
Gloag, Ralph W. . . . . 30 Pemberton Sq., Boston.
Goddard, George A. . . . 10 Tremont St., Boston.
Goding, Edward V. . . . 626 Tremont Bldg., Boston.
Goodale, Francis G. . . . 53 State St., Boston.
Goodfellow, Aubrey Z. . . 748 Main St., Fitchburg.
Goodspeed, Alex. McL. . . 791 Purchase St., New Bedford.
Grabill, E. V. . . . . 73 Tremont St., Boston.
Grant, Robert . . . . . Court House, Boston.
Grant, Walter B. . . . . 294 Washington St., Boston.
Gray, Burton P. . . . . Tremont Bldg., Boston.
Gray, J. Converse . . . . 18 Tremont St., Boston.
Gray, Morris . . . . . 16 State St., Boston.
Gray, Roland . . . . . 60 State St., Boston.

Greene, F. L.	Greenfield.
Greenhalge, Frederic B.	84 State St., Boston.
Grime, George	8 S. Main St., Fall River.
Grinnell, Frank W.	16 Central St., Boston.
Grover, Emery	50 Bromfield St., Boston.
Hale, Edwin B.	18 Tremont St., Boston.
Hale, Richard W.	16 Central St., Boston.
Hall, Damon E.	530 Exchange Bldg., Boston.
Hall, E. K.	101 Milk St., Boston.
Hall, Frank B.	520 State Mutual Bldg., Worcester.
Hall, F. Rockwood	10 Tremont St., Boston.
Hall, Frederick S.	1 Crocker Bldg., Taunton.
Hall, John L.	30 State St., Boston.
Hall, Walter Perley	Court House, Boston.
Halloran, James A.	15 State St., Boston.
Hallowell, J: Mott	Pemberton Bldg., Boston.
Hamilton, Samuel K.	31 Milk St., Boston.
Hamilton, William	Springfield.
Hammond, Franklin T.	1001 Pemberton Bldg., Boston.
Hammond, John C.	Northampton.
Hammond, J. W.	337 Harvard St., Cambridge.
Hannigan, John E.	206 Barristers Hall, Boston.
Harding, Heman A.	Chatham.
Hardy, Arthur P.	70 State St., Boston.
Hardy, John H.	24 Irving St., Arlington.
Harris, Henry F.	340 Main St., Worcester.
Harris, Robert O.	East Bridgewater.
Harris, Samuel T.	6 Beacon St., Boston.
Hartstone, Walter	53 State St., Boston.
Harvey, George S.	Barristers Hall, Boston.
Haywood, Charles E.	19 Congress St., Boston.
Heady, Wallace R.	Court House, Springfield.
Hemenway, Alfred	334 Tremont Bldg., Boston.
Herbert, John	19 Milk St., Boston.
Herrick, Robert F.	84 State St., Boston.
Hersey, Arthur U.	16 State St., Boston.
Hesseltine, Norman F.	10 Tremont St., Boston.
Hibbard, Charles E.	24 North St., Pittsfield.
Hickey, Charles J.	713 Slater Bldg., Worcester.
Higgins, John J.	60 State St., Boston.
Hill, Arthur D.	53 State St., Boston.
Hill, Edwin N.	523 Kimball Bldg., Boston.
Hill, James Gilbert	Hildreth Bldg., Lowell.
Hill, Luther	38 Equitable Bldg., Boston.
Hills, George E.	100 Boylston St., Boston.
Hitch, Mayhew R.	Masonic Bldg., New Bedford.
Hitchcock, Loranus E.	Court House, Boston.

Hitchcock, Wm. Harold . . 53 State St., Boston.
Hoague, Theodore . . . 84 State St., Boston.
Hoban, Owen A. . . . . Gardner.
Hodges, George C. . . . 31 Milk St., Boston.
Holland, Bert E. . . . . Tremont Bldg., Boston.
Holmes, Edward J. . . . 53 State St., Boston.
Holmes, Oliver Wendell . . U. S. Supreme Court, Washington, D.C.
Homans, R. . . . . 53 State St., Boston.
Hopkins, Raymond A. . . Barnstable.
Hopkins, W. S. B. . . . Court House, Boston.
Houghton, Arthur S. . . Court House, Worcester.
Howard, Albert S. . . . 500 Hildreth Bldg., Lowell.
Howard, Arthur L. . . . 53 State St., Boston.
Howe, Elmer P. . . . . 53 State St., Boston.
Hudson, Gardner K. . . . 11 Park Bldg., Fitchburg.
Hudson, Woodward . . . 344 South Station, Boston.
Hughes, J. T. . . . . 53 State St., Boston.
Hunneman, Carleton . . . 60 State St., Boston.
Hunnewell, Francis W., 2nd 5 University Hall, Cambridge.
Hunnewell, James M. . . 340 Tremont Bldg., Boston.
Hunt, Thomas . . . . . 55 Congress St., Boston.
Huntress, George L. . . . 401 Sears Bldg., Boston.
Hurlburt, Henry F. . . . 53 State St., Boston.
Hurtubis, Francis, Jr. . . 6 Beacon St., Boston.
Hutchings, Henry M. . . 73 Tremont St., Boston.
Hutchins, Edward W. . . 511 Sears Bldg., Boston.
Hutchinson, Freedom . . Ames Bldg., Boston.

Innes, Chas. H. . . . . 53 State St., Boston.
Irwin, Richard W. . . . 160 Main St., Northampton.

Jackson, Eugene B. . . . 53 State St., Boston.
Jackson, James F. . . . 60 State St., Boston.
Jacobs, Joseph B. . . . . 45 Milk St., Boston.
James, Ellerton . . . . 10 P. O. Sq., Boston.
Jenney, Charles F. . . . Court House, Boston.
Jenney, Edwin C. . . . . 35 Congress St., Boston.
Jennings, Andrew J. . . . 23 S. Main St., Fall River.
Johnson, Benjamin H. . . 50 State St., Boston.
Johnson, Edward F. . . . 349 Main St., Woburn.
Johnson, Ernest H. . . . 17 Milk St., Boston.
Johnson, Melvin M. . . . 89 State St., Boston.
Johnson, Reginald H. . . 53 State St., Boston.
Jones, B. B. . . . . 506 Exchange Bldg., Boston.
Jones, Matt. B. . . . . 50 Oliver St., Boston.
Jones, Nathaniel N. . . . 53 State St., Boston.
Jones, Stephen R. . . . . 60 Federal St., Boston.
Joslin, Ralph E. . . . . 10 Tremont St., Boston.
Joyner, Herbert C. . . . Great Barrington.

Katz, Maurice L.	State Mutual Bldg., Worcester.
Keating, Patrick M.	34 Eliot St., Jamaica Plain.
Keefe, John A.	10 Tremont St., Boston.
Kellen, Wm. V.	310 Commonwealth Ave., Boston.
Kelley, George W.	Rockland.
Kelley, James E.	Old South Bldg., Boston.
Kendrick, Edmund P.	476 Main St., Springfield.
Kendricken, John M.	626 Exchange Bldg., Boston.
Kenny, Thomas J.	87 Milk St., Boston.
Kerwin, J. J.	Hildreth Bldg., Lowell.
Keyes, Prescott	Barristers Hall, Boston.
Kimball, Benjamin	15 Exchange St., Boston.
Kimball, George E.	18 Tremont St., Boston.
King, C. C.	1147 Main St., Brockton.
King, Henry A.	Court House, Springfield.
Knight, Robert A.	500 Main St., Springfield.
Knowlton, M. P.	Springfield.
Ladd, Babson S.	10 Tremont St., Boston.
Ladd, Walter A.	754 Old South Bldg., Boston.
Lasker, Henry	310 Main St., Springfield.
Lawler, Frank J.	268 Main St., Greenfield.
Lawton, Frederic	Court House, Boston.
Lawton, Geo. F.	Middlesex Probate Court, Cambridge.
Leahy, John P.	18 Tremont St., Boston.
Leary, Daniel E.	31 Elm St., Springfield.
Leverett, Geo. V.	53 Devonshire St., Boston.
Leveroni, Frank	815 Tremont Bldg., Boston.
Lewenberg, Solomon	Tremont Bldg., Boston.
Light, Robert W.	60 State St., Boston.
Lilley, Charles S.	236 Fairmount St., Lowell.
Lincoln, Albert L.	126 State St., Boston.
Lincoln, Alexander	Tremont Bldg., Boston.
Lincoln, Arba N.	29 Bedford St., Fall River.
Lincoln, Daniel W.	810 Slater Bldg., Worcester.
Linscott, Frank K.	60 Congress St., Boston.
Littlefield, Geo. S.	294 Washington St., Boston.
Loomis, Elihu G.	15 State St., Boston.
Lord, Arthur	70 State St., Boston.
Loring, Augustus P.	40 State St., Boston.
Loring, Victor J.	Old South Bldg., Boston.
Loring, Wm. Caleb	Court House, Boston.
Lothrop, Thornton K., Jr.	35 Equitable Bldg., Boston.
Lourie, David A.	601 Old South Bldg., Boston.
Lourie, Moses S.	18 Tremont St., Boston.
Lourie, Myer L.	18 Tremont St., Boston.
Lowell, James A.	38 Equitable Bldg., Boston.
Lowell, John	38 Equitable Bldg., Boston.

Luce, Robert L. . . . . 8 Bosworth St., Boston.
Lummus, Henry T. . . . 38 Exchange St., Lynn.
Lyford, Edwin F. . . . . 500 Main St., Springfield.
Lynch, Thomas J. . . . 206 High St., Holyoke.
Lynde, A. Selwyn . . . 68 Cornhill, Boston.

Mack, John H. . . . . North Adams.
MacLaughlin, John D. . . Court House, Boston.
Mahan, Mrs. Mary A. . . 15 Beacon St., Boston.
Mahoney, J. J. . . . . Court House, Lawrence.
Mahoney, J. P. S. . . . 301 Essex St., Lawrence.
Malone, Dana . . . . . 506 Sears Bldg., Boston.
Maloney, John M. . . . 450 Tremont Bldg., Boston.
Mansfield, Frederick W. . Old South Bldg., Boston.
Marble, Frederick P. . . Sun Bldg., Lowell.
Marden, Oscar A. . . . . 412 Sears Bldg., Boston.
Martell, Charles J. . . . 25 Pemberton Square, Boston.
Mason, Edward H. . . . 70 Kilby St., Boston.
Mason, John W. . . . . 59 Main St., Northampton.
Mayberry, Geo. L. . . . 1001 Pemberton Bldg., Boston.
Mayo, Henry R. . . . . 333 Union St., Lynn.
McAnarney, John W. . . 412 Sears Bldg., Boston.
McCarthy, John . . . . 106 Main St., Brockton.
McClennen, Edward F. . . 161 Devonshire St., Boston.
McConnell, James E. . . 914 Tremont Bldg., Boston.
McDonough, Charles A. . 18 Tremont St., Boston.
McIntire, Chas. H. . . . Wyman's Exchange, Lowell.
McIntire, Frederic M. . . 35 Congress St., Boston.
McKechnie, William G. . . 31 Elm St., Springfield.
McLellan, Hugh D. . . . 141 Milk St., Boston.
McMahon, Edward J. . . 109 Walker Bldg., Worcester.
McPeck, Edwin K. . . . Adams.
Meagher, John H. . . . 311 Main St., Worcester.
Mellen, Charles C. . . . 209 Washington St., Boston.
Mellish, Wm. C . . . . Slater Bldg., Worcester.
Merriam, John M. . . . 99 State St., Boston.
Metzler, Curtis G. . . . . Tremont Bldg., Boston.
Michelman, Joseph . . . 608 Pemberton Bldg., Boston.
Miller, Samuel W. . . . 745 Main St., Fitchburg.
Millett, Joshua H. . . . 40 Central St , Boston.
Milliken, Frank A. . . . 3d District Court, New Bedford.
Milton, Charles C. . . . State Mutual Bldg., Worcester.
Mitchell, Charles . . . . 16 Masonic Bldg., New Bedford.
Montague, David T. . . . 73 Tremont St., Boston.
Moody, W. H. . . . . . Haverhill.
Morse, Wm. A. . . . . 54 Equitable Bldg., Boston.
Morton, James M. . . . 487 Rock St., Fall River.
Morton, Jas. M., Jr. . . . U.S. Courts, Boston.

Morton, Marcus	Court House, Boston.
Morton, William S.	Adams.
Motley, Warren	35 Congress St., Boston.
Mulligan, Henry C.	726 Tremont Bldg., Boston.
Mullin, Francis R.	212 Barristers Hall, Boston.
Murphy, Dennis J.	53 Central St, Lowell.
Murphy, Jas. R.	1 Beacon St., Boston.
Murphy, John W.	Worcester.
Myrick, N. Sumner	Barristers Hall, Boston.
Naphen, William J.	12 Main St., Natick.
Nash, Frederick H.	30 State St., Boston.
Nay, Frank N.	Tremont Bldg., Boston.
Nelson, Julius	18 Tremont St., Boston.
Newell, James M.	53 State St., Boston.
Nichols, Philip	73 Tremont St., Boston.
Niles, Clarence P.	Pittsfield.
Norcross, Grenville H.	50 Congress St., Boston.
Norton, Fred L.	432 Tremont Bldg., Boston.
Norwood, C. Augustus	70 State St., Boston.
Noxon, John F.	24 North St., Pittsfield.
Nutter, Geo. R.	161 Devonshire St., Boston.
Nutter, Richard W.	106 Main St., Brockton.
O'Brien, Edward B.	31 Exchange St., Lynn.
O'Brien, Thomas D.	243 High St., Holyoke.
O'Brien, Timothy F.	71 Williams St., New Bedford.
O'Connell, Charles J.	623 State Mutual Bldg., Worcester.
O'Connell, Daniel T.	53 State St., Boston.
O'Connell, David F.	311 Main St., Worcester.
O'Connell, Joseph F.	53 State St., Boston.
O'Connell, Philip J.	Court House, Worcester.
O'Donnell, Geo. P.	102 Main St., Northampton.
O'Donnell, James E.	45 Merrimack St., Lowell.
Ogden, H. W.	834 Tremont Bldg., Boston.
Olmstead, James M.	125 P.O. Bldg., Boston.
Olney, Richard	710 Sears Bldg., Boston.
O'Loughlin, Patrick	18 Tremont St., Boston.
Palfrey, John G.	84 State St., Boston.
Palmer, Grant M.	6 Beacon St., Boston.
Palmer, Joseph N.	45 Milk St., Boston.
Parker, Edmund M.	131 State St., Boston.
Parker, Herbert	910 Barristers Hall, Boston.
Parker, Robert Chapin	26 Elm St., Westfield.
Parker, Wm. C.	29 Masonic Bldg., New Bedford.
Parsons, Birney C.	19 Congress St., Boston.
Parsons, Starr	38 Exchange St., Lynn.

Patrick, Henry B. . . . . 15 State St., Boston.
Paul, Frank . . . . . 87 Milk St., Boston.
Peabody, Francis . . . . Devonshire Bldg., Boston.
Pease, Frank A. . . . . 31 So. Main St., Fall River.
Peck, John H. . . . . 119 Milk St., Boston.
Pelletier, Joseph C. . . . Barristers Hall, Boston.
Perkins, Edward C. . . . 706 Sears Bldg., Boston.
Perkins, Thomas N. . . . 60 State St., Boston.
Perry, Charles B. . . . . Worcester.
Peters, W. Scott . . . . Haverhill.
Phelps, Carlton T. . . . 82 Main St., North Adams.
Phillips, Arthur S. . . . 22 Bedford St., Fall River.
Phillips, Benjamin . . . 53 State St., Boston.
Phipps, George V. . . . 85 Devonshire St., Boston.
Pickman, John J. . . . . Hildreth Bldg., Lowell.
Pierce, Edward P. . . . Court House, Boston.
Pillsbury, Albert E. . . . 6 Beacon St., Boston.
Pinkerton, Alfred S. . . . 402 State Mutual Bldg., Worcester.
Pinkham, Walter S. . . . 954 Old South Bldg., Boston.
Poor, John R. . . . . 1120 Beacon St., Brookline.
Powers, Samuel L. . . . 101 Milk St., Boston.
Prescott, Oliver . . . . 6 Masonic Bldg., New Bedford.
Pulsifer, George Royal . . 412 Barristers Hall, Boston.
Putnam, James L. . . . . 60 State St., Boston.
Putnam, Wm. L. . . . . 60 State St., Boston.
Putnam, Wm. L. . . . . . U.S. Courts, Boston.

Qua, Stanley E. . . . . 500 Hildreth Bldg., Lowell.
Quimby, William . . . . 53 State St , Boston.
Quincy, Josiah H. . . . 19 Milk St., Boston.
Quinn, Joseph F. . . . . Court House, Boston.

Rackemann, Chas. S. . . 75 Ames Bldg., Boston.
Rackemann, Felix . . . 75 Ames Bldg., Boston.
Rand, Arnold A. . . . . 178 Devonshire St., Boston.
Rand, Edward L. . . . . 53 State St., Boston.
Ranney, Fletcher . . . . 6 Beacon St., Boston.
Raymond, John M. . . . 221 Essex St., Salem.
Raymond, Robert F. . . . Newton Centre.
Read, Charles C. . . . . 31 State St , Boston.
Reed, Warren A. . . . . 231 Main St., Brockton.
Reynolds John J. . . . 101 Milk St., Boston.
Rice, Albert W. . . . . 161 Devonshire St., Boston.
Rice, John C. . . . . 714 Shawmut Bank Bldg., Boston.
Rich, Edgar J. . . . . 19 North Station, Boston.
Richards, Albin L. . . . 53 State St., Boston.
Richardson, Frank C. . . Essex, Mass.
Richardson, Henry T. . . 18 Tremont St., Boston.

Riley. Frank L.	610 State Mutual Bldg., Worcester.
Riley, Thomas P.	Tremont Bldg., Boston.
Robbins, Reginald L.	19 Congress St., Boston.
Robinson, Walter S.	500 Main St , Springfield.
Robson, Stuart M.	476 Main St., Springfield.
Rogers, Henry M.	89 State St., Boston.
Rogers, William C.	43 Tremont St., Boston.
Rowell, Wilbur E.	301 Essex St., Lawrence.
Rubenstein, Philip	60 State St., Boston.
Rugg, Arthur P.	Court House, Boston.
Ruggles, Daniel B.	73 Tremont St., Boston.
Russell, Arthur H.	27 State St., Boston.
Russell. J. Porter	18 Tremont St., Boston.
Ryan, Frank P.	827 Slater Bldg., Worcester.
Ryder, Robert L.	85 Devonshire St., Boston.
Saltonstall, E. P.	60 State St., Boston.
Saltonstall, Richard M.	Shawmut Bank Bldg., Boston.
Sander, Wm. J. E.	16 Central St., Boston.
Sanderson, Geo. A.	Ayer.
Saunders, Amos T.	Clinton.
Saunders, Charles G.	95 Milk St., Boston.
Saville, Huntington	701 Barristers Hall, Boston.
Sawyer, Alfred P.	45 Merrimack St., Lowell.
Sawyer, Geo. A.	73 Tremont St., Boston.
Sawyer, Henry C.	53 State St., Boston.
Scales, Otto C.	53 Devonshire St., Boston.
Schoonmaker, John H.	68 Main St., Ware.
Scott, Augustus E.	100 Ames Bldg., Boston.
Scott, Henry R.	60 State St., Boston.
Sears, Geo. B.	114 Washington St., Salem.
Sears, Russell A.	101 Milk St., Boston.
Sears, Wm. R.	73 Tremont St., Boston.
Sevasly, Miran	294 Washington St., Boston.
Shattuck, Charles E.	19 Congress St., Boston.
Shattuck, Henry L.	60 State St., Boston.
Shaw, Edward L.	59 Main St., Northampton.
Shaw, J. E. Norton	1 Masonic Bldg., New Bedford.
Sheehan, John W.	605 State Mutual Bldg., Worcester.
Sheehan, Joseph A.	53 State St., Boston.
Sheldon, Henry N.	Court House, Boston.
Shepard, Harvey N.	53 State St., Boston.
Sherman, Clifford P.	33 Masonic Bldg., New Bedford.
Sibley, Charles H.	820 Slater Bldg., Worcester.
Sibley, J. Otis	509 State Mutual Bldg., Worcester.
Sibley, Willis E.	820 Slater Bldg., Worcester.
Sigilman, Samuel	294 Washington St., Boston.
Simpson, Frank L.	159 Devonshire St., Boston.

Sisk, Jas. H. . . . . . 145 Munroe St., Lynn.
Skerrett, Mark N. . . . 524 State Mutual Bldg., Worcester.
Slater, John S. . . . . 18 Tremont St., Boston.
Slattery, C. H. . . . . City Hall, Boston.
Smith, Arthur Thad . . . 45 Milk St., Boston.
Smith, Curtis N. . . . . 19 Congress St., Boston.
Smith, Fitz Henry, Jr. . . 35 Congress St., Boston.
Smith Frank C., Jr. . . . Worcester.
Smith, Jeremiah, Jr. . . . 84 State St., Boston.
Snow, Charles A. . . . . 50 Ames Bldg., Boston.
Southard, Louis C. . . . 601 Tremont Bldg., Boston.
Southgate, Louis W. . . . 25 Foster St., Worcester.
Sparrow, Frank M. . . . 782 Purchase St., New Bedford.
Spear, Ellis, Jr. . . . . 626 Tremont Bldg., Boston.
Sprague, Charles H. . . . 15 Beacon St., Boston.
Sprague, Henry H. . . . 50 Congress St., Boston.
Spring, Arthur L. . . . . 435 Tremont Bldg., Boston.
Spring, Romney . . . . 73 Tremont St., Boston.
Stanton, Horace B. . . . 60 State St., Boston.
Stebbins, Charles H. . . . 53 State St., Boston.
Stetson, Eliot Dawes . . . Masonic Bldg., New Bedford.
Stevens, Elisha M. . . . 333 Union St., Lynn.
Stevens, Solon W. . . . 606 Wyman's Exchange, Lowell.
Stevens, W. B. . . . . . Court House, Boston.
Stewart, Frank H. . . . 6 Beacon St., Boston.
Stewart, Ralph A. . . . . 30 State St., Boston.
Stiles, Jas. A. . . . . Gardner.
Stobbs, George R. . . . 708 Slater Bldg., Worcester.
Stone, Edward C. . . . . 53 State St., Boston.
Stone, Robert B. . . . . 50 State St., Boston.
Stone, Wilmore B. . . . 15 Elm St., Springfield.
Stoneman, David . . . . 610 Pemberton Bldg., Boston.
Storer, Oscar . . . . . 53 State St., Boston.
Storey, Moorfield . . . . 735 Exchange Bldg., Boston.
Storrow, James J. . . . 44 State St., Boston.
Stratton, Charles E. . . . 70 State St., Boston.
Studley, James B. . . . 161 Devonshire St., Boston.
Sturgis, Roger F. . . . . 68 Ames Bldg., Boston.
Sullivan, James W. . . . 31 Exchange St., Lynn.
Sullivan, John A. . . . . 450 Tremont Bldg., Boston.
Sullivan, Michael A. . . . 606 Bay State Bldg., Lawrence.
Sullivan, Thomas H. . . . 900 Slater Bldg., Worcester.
Sullivan, Wm. B. . . . . 538 Tremont Bldg., Boston.
Swaim, Roger D. . . . . 16 Central St., Boston.
Sweetser, George A. . . . 84 State St., Boston.
Sweetser, I. Homer . . . 53 State St., Boston.
Swift, Henry W. . . . . 50 State St., Boston.
Swift, James M. . . . . 30 State St., Boston.
Swift, John E. . . . . Milford.

Taft, George S.	708 Slater Bldg., Worcester.
Taft, Stephen S.	Court Sq. Theatre Bldg., Springfield.
Taintor, Giles	53 State St., Boston.
Tarr, Frederick H.	111 Main St., Gloucester.
Tatman, Charles T.	900 Slater Bldg., Worcester.
Thayer, Charles M.	509 State Mutual Bldg., Worcester.
Thayer, Ezra R.	Harvard Law School, Cambridge.
Thibodeau, Wm. A.	6 Beacon St., Boston.
Thompson, Marshall P.	15 State St., Boston.
Thompson, Wm. G.	1134 Tremont Bldg., Boston.
Thorndike, J. L.	735 Exchange Bldg., Boston.
Tibbetts, G. Wallace	21 Milk St , Boston.
Tinkham, George H.	Barristers Hall, Boston.
Tisdale, Archibald R.	North Station, Boston.
Towle, William W.	10 Tremont St., Boston.
Trask, Wm. Ropes	40 State St., Boston.
Trull, Larkin T.	103 Central St., Lowell.
Tudor, Henry D.	35 Congress St., Boston.
Tuller, Willis N.	Tremont Bldg., Boston.
Turner, Wm. D.	87 Milk St., Boston.
Twombly, Howland	84 State St., Boston.
Tyler, Charles H.	Ames Bldg., Boston.
Underwood, Edward S.	333 Union St., Lynn.
Underwood, W. Orison	50 State St., Boston.
Upton, Eugene C.	166 Devonshire St., Boston.
Vahey, James H.	18 Tremont St., Boston.
Van Kleeck, Walter L.	511 Sears Bldg., Boston.
Vaughan, Ernest H.	340 Main St., Worcester.
Vaughan, Henry G.	53 State St., Boston.
Vinton, Alfred C.	19 Milk St., Boston.
Wait, Wm. Cushing	Court House, Boston.
Wakefield, John Lathrop	178 Devonshire St., Boston.
Walcott, Robert	Barristers Hall, Boston.
Walsh, P. D.	6 Beacon St., Boston.
Walsh, Thomas L.	280 Main St., Fitchburg.
Wardner, G. Philip	110 State St., Boston.
Ware, Charles E.	Fitchburg.
Warner, H. E.	84 State St., Boston.
Warner, Jos. B.	84 State St., Boston.
Warner, M. B.	24 North St , Pittsfield.
Warner, Roger S.	60 State St., Boston.
Warren, Bentley W.	30 State St., Boston.
Warren, Charles	Journal Bldg., Boston.
Warren, Edward H.	55 Congress St., Boston.
Warren, H. Ernest	10 Tremont St., Boston.
Warren, Joseph	Harvard Law School, Cambridge.

Warren, Joseph F. . . . 50 Congress St., Boston.
Warshauer, Charles S. . . 53 State St., Boston.
Waterman, Curtis H. . . 246 Washington St., Boston.
Waters, Bertram G. . . . 70 Kilby St., Boston.
Webster, Allen . . . . . 438 Main St., Springfield.
Webster, Charles S. . . . Slater Bldg., Worcester.
Weed, Alonzo R. . . . . 40 Central St., Boston.
Weed, Arthur H. . . . . 53 State St., Boston.
Weed, C. F. . . . . 53 State St., Boston.
Weed, George M. . . . . 40 Central St., Boston.
Wellman, Arthur H. . . . 50 Congress St., Boston.
Wells, Wellington . . . 412 Barristers Hall, Boston.
Welsh, Walter . . . . . Provincetown.
Weston, Robert D. . . . 70 State St., Boston.
Weston, Thomas, Jr. . . . Sears Bldg., Boston.
Wharton, Wm. F. . . . . 50 State St., Boston.
Wheeler, Henry . . . . 511 Sears Bldg., Boston.
Whipple, Sherman L. . . Tremont Bldg., Boston.
White, Alden P. . . . . 256½ Essex St., Salem.
White, Lloyd E. . . . . Court House, Boston.
Whiteside, Alexander . . 30 State St., Boston.
Whiting, Winfred H. . . 626 Slater Bldg., Worcester.
Whitman, Edmund A. . . 1101 Pemberton Bldg., Boston.
Whittemore, C. A. . . . 728 Exchange Bldg., Boston.
Whittemore, Henry E. . . 294 Washington St., Boston.
Whittlesey, John J. . . . 1 Central Block, Pittsfield.
Wier, Frederick N. . . . 103 Central St., Lowell.
Wiggin, Joseph . . . . 27 State Street, Boston.
Wiles, Thomas L. . . . . 84 State Street, Boston.
Williams, Charles M. . . Lowell.
Williams, Harold P. . . . 60 Congress St., Boston.
Williams, Moses . . . . 126 State St., Boston.
Williston, Samuel . . . . Harvard Law School, Cambridge.
Wilson, T. Edmund P. . . Lynn.
Winn, John J. . . . . 115 Merrimack St., Haverhill.
Withington, Arthur . . . 76 State St., Newburyport.
Witte, Martin . . . . . 18 Tremont St., Boston.
Wolcott, Roger . . . . 60 State St., Boston.
Wood, L. Elmer . . . 119 Granite Block, Fall River.
Wooden, Frederick G. . . 31 Elm St., Springfield.
Worthen, Albert P. . . . 67 Milk St., Boston.
Worthington, John W. . . 30 State St., Boston.
Wrightington, S. R. . . . 31 State St., Boston.
Wyman, Henry A. . . . 53 State St., Boston.
Wyman, John P. . . . . Sears Bldg., Boston.

Young, Owen D. . . . . 30 Church St., New York, N.Y.
Young, Stephen E. . . . 84 State St., Boston.
Youngman, Wm. S. . . . 19 Congress St., Boston.

APPENDIX

Massachusetts Bar Association

Report of
COMMITTEE ON LEGISLATION
for 1914

Committee on Legislation

David A. Ellis, *Chairman,*	of Boston
Elisha H. Brewster	Springfield
Charles M. Davenport	Boston
George T. Dewey	Worcester
George A. Flynn	Boston
Frank W. Grinnell, *Secretary,*	Boston
John E. Hannigan	Cambridge
Albert S. Howard	Lowell
C. C. King	Brockton
Arthur Lord	Plymouth
Henry T. Lummus	Lynn
Amos T. Saunders	Clinton
Jeremiah Smith, Jr.	Cambridge
William G. Thompson	Newton

DAVID F. SLADE, of Fall River, a member of this committee, died June 28, 1914.

Mr. Slade's contribution to the work of the committee was substantial. He brought to its deliberations a large experience, sound judgment, and a capacity for fair and unprejudiced consideration of the various matters with which the committee had to deal.

This committee shares the deep sense of loss which his death has brought to his many other friends.

TABLE OF CONTENTS.

Part IV.

Part V.

REPORT OF COMMITTEE ON LEGISLATION FOR 1914.

INTRODUCTION.

The full report of this committee last year was received with so many expressions of interest from members of the Association all over the State that the committee makes a similar report this year and suggests that the preparation of a full report in print be established as part of the work which is expected of this committee.

Since the publication of "The Law Reporter" ceased in 1866 there has been no regular legal publication which has given special attention to matters affecting the work of the profession in Massachusetts. The bar in general is not kept in touch with current movements in the law of the State as much as it should be. This is a misfortune and some method must be found to keep the bar informed in order to preserve and encourage a widespread professional interest. With the constantly accumulating volume of reports and complicated statutes, with the tendencies to specialize and the pressing demands of modern life on the time and strength of individuals, there is serious danger that the interests as well as the knowledge of the bar will be too restricted by circumstances. And yet the stability and sound development of the law must depend largely in the future, as in the past, on the training and common sense of general practitioners who have more than one line of interest in the law. It is such men that must perform what Mr. Justice Hughes has described as the greatest

function of the American bar to-day, viz., to explain to the people their own institutions.

A state bar association should act as a clearing-house for conflicting views at the bar and in order that this function may be properly performed it is essential that there should be a regular bulletin of information to the members. It is to serve this purpose that this report is issued and it is for these reasons that we recommend its annual preparation and distribution by future committees.

The Legislature of 1914 passed 796 acts and 160 resolves, and in the course of the session, which lasted until July 7, considered about 2,700 matters which were submitted to it. In accordance with the by-laws your committee selected from this mass subjects calling for consideration by the Association and applied to the Executive Committee for authority to act.

Four constitutional amendments passed the first stage this year (see Part II. of this report) and a great many others were proposed (see Part IV. of this report).

Among the acts passed relative to practice are

The Act to accelerate the settlement of estates	chap. 699
The anti-injunction Act . . .	chap. 778
The Act relating to Auditors in civil actions	chap. 576
The Act changing the burden of proving contributory negligence . . .	chap. 553
The Act relative to the admission as evidence of record of conviction of witnesses	chap. 406
The Act to make it clear that a deed by an executor or administrator c.t.a. under a power in the will carries a	

title clear of debts — thus removing an inconvenient uncertainty which has existed at the bar because of differences of opinion as to existing law .	chap. 436
The Act allowing public authorities to petition for the assessment of damages when they have taken or injured property	chap. 33

Some of these acts are discussed at the beginning of Part III. of this report.

The report will be divided, as it was last year, into parts:

Part I. Discussions and recommendations for the consideration of the Association or of the Executive Committee (see pp. 12–56).

Part II. Proposed Amendments to the Constitution passed for the first time by the Legislature (see pp. 57–59).

Part III. A review of legislation of 1914 of special interest to the bar, with explanatory notes (see pp. 60–90).

Part IV. Constitutional proposals which were not adopted (see pp. 91–96).

Part V. A review of some legislation which was proposed but not enacted (see pp. 97–116).

In connection with the recommendations contained in Part I., especially that relating to the system of civil appeals from the lower courts, we call attention to By-Law VIII., which directs this Committee "to observe the practical working of the judicial system of the State and recommend by written or printed report from time to time any changes therein which observation or experience may suggest."

The Necessity for Assistance in the Work of the Legislative Committee.

The work of this committee requires much time and effort if it is to be done as it should be done by this Association. The mass of proposed legislation has to be examined and sorted out, frequent conferences held with persons interested in the various branches of the law involved in proposed legislation, hearings on the various bills attended, bills and amendments drawn, meetings of the committees arranged and notices given and the material arranged for consideration of the committees, correspondence attended to, reports prepared, etc. Thus far this work has been done by members of the committee, who have been glad to give their services. They ought not, however, to be burdened with such a mass of detail without assistance. We recommend that this committee be authorized to employ an assistant secretary on such terms as may be approved by the Executive Committee. If this is done the work of keeping members informed as to legislation and proposed legislation, during the sessions, can be more fully developed.

The Simplified Procedure Act of 1913 (Chapter 716 of 1913).

The Massachusetts reports since the passage of this act, which was discussed at length last year (see Mass. Bar Assoc. Rep., Vol. IV., pp. 98–105), indicate that the act is working well and accomplishing the purposes for which it was passed.

Podespik v. *Worcester, etc., St. Ry.*, 216 Mass. 213, at p. 215.

Lodge v. *Swampscott*, 216 Mass. 260, at p. 263.

Morgan v. *Murdough*, 216 Mass. 502, at p. 505.

Loanes v. *Gast*, 216 Mass. 197, at p. 199.
cf. *Pigeons Case*, 216 Mass. 51, at p. 55.
cf. *Cullabuca* v. *Plymouth Rubber Co.*, 217 Mass. 392, at p. 396.

One of the first acts passed by the legislature this year (Chapter 35 of 1914) was to extend its provisions to the appellate division of the Municipal Court of the City of Boston.

It is to be regretted that Section 3 of the act was not broad enough to allow the amendment of a bill of exceptions by agreement of all parties as decided in *Tighe* v. *Maryland Casualty Co.*, 216 Mass. 460. This matter is discussed later in Part I. of this report.

THE INTERROGATORY ACT OF 1913 (Chapter 815 of 1913).

In connection with this act, which was discussed last year (see Mass. Bar Assoc. Rep., Vol. IV., pp. 105–108) it should be noticed that the recent case of *Wakeley* v. *Boston El. Ry. Co.*, 217 Mass. at 491, was tried before the act went into effect, so that the case deals only with the previous statutes.

THE BOOK ACCOUNT STATUTE OF 1913, c. 288.

This statute has now been in operation for somewhat over a year. The only criticism of it which has come to the attention of the committee is the following passage from the opinion of the Court in *Brooks* v. *Wilson*, decided May 26, 1914 (see Banker and Tradesman of July 4, 1914, p. 45). The Court said at page 45:

> "The terms of St. 1913, c. 288, follow those used in R.L., c. 175, s. 66. The former act must be held to make accounts admissible in evidence, although they are self-serving, provided they were made in good

faith in the regular course of business and before the beginning of the court proceedings in question.

This is an exception to the general rule as to the admissibility of self-serving statements made by a party to an action in court. Why this exception should have been made is not apparent. Under this statute, if a party should make a self-serving statement in good faith by proclaiming it in public upon the house-tops or including it in a number of letters published in the public prints, it is still inadmissible. But by this statute an exception to the general rule is made, and a self-serving entry in the plaintiff's private book of account known to no one but himself is made evidence of the facts there stated."

As the Court states that it does not see the reason for the exception provided by the statute it may be that some members of the bar are in a similar predicament. As to this statute see Mass. Bar Assoc. Report, Vol. IV., pp. 77 and 98. We respectfully suggest that the reason for the distinction made by the statute between an entry in an account made in the regular course of business and a statement made "upon the house-tops" or "published in the public prints," is the "circumstantial guarantee of trustworthiness" discussed in detail by Wigmore (Evidence Section 1546 and elsewhere), which as a practical matter in ordinary business gives greater probative value to regular entries than attaches to casual statements. Of course no rule will eliminate all possibilities of fraud, but by this guarded statute when administered by the presiding judge with common sense we believe one step has been taken toward making "our system of evidence . . . conformable to the changing convenience of mankind" (see Thayer "Preliminary Treatise on Evidence at the Common Law," chapter on "The Present and Future of the Law of Evidence," pp. 536–537).

One of the objects of the statute, of course, was to recognize the conditions of modern business under which the old strict law of evidence sometimes made it a practical impossibility to collect an honest bill because every salesgirl and clerk and sales slip, etc., in a department store, or other large business, could not always be produced in court.

In the case of *Brooks* v. *Wilson*, above referred to, the entry was admitted not on the question of whether goods were sold and delivered, as that was not disputed, but on the issue as to whom credit was given. Under the case of *Kaiser* v. *Alexander*, 144 Mass. 71, the entry was not admissible on this issue prior to the statute. It is true that on the issue of giving credit, or in fact on any issue, the probative value of an entry may be greater or less according to circumstances which may make it advisable for the Court to require all the circumstances of the entry to be laid before the jury. But in view of the control, which is given to the Court, over the use of such evidence the statute seems to us a good one.

PART I.

DISCUSSIONS AND RECOMMENDATIONS.

(1) The annual proposals for an elective judiciary.

Every year there is a proposal introduced to force an elective judiciary for short terms of five years or so on the State of Massachusetts. This Association has regularly opposed this movement.

In view of the persistent appearance of the plan, however, and the misconception of history which leads even some members of the bar to appear in favor of it and to state before the legislative committee that the tenure of our judges is a "survival of a monarchical system," the committee send with this report a copy of Roscoe Pound's recent article on "Justice According to Law." This is one of the most valuable, instructive, and readable pieces of law writing that has appeared in years and it deserves to be read by every member of the Association. It is a comparative study of the practical working in this country and elsewhere of the different methods of administering justice.

How any one at all familiar with the struggle for civil liberty under the Stuart kings can say that life tenure of judges is a relic of monarchy, is a mystery. On the contrary the tenure of our judges is the direct result of the fact that Sir Edward Coke was removed from the bench by the King because he refused to decide cases as the King wanted him to and was the most vigorous and uncompromising champion in England of the common law rights of Englishmen and of parliament against the growing arrogance and despotism of the crown.

This struggle between Lord Coke and James I. is graphi-

cally described in Trevelyan's "England under the Stuarts," pp. 121–122, as follows:

> "During the period of unparliamentary government (1611–21) the rights of the subject had found a strange and memorable champion. What Parliament could not assert on behalf of the nation, a single Judge had asserted on behalf of himself and of the law. Sir Edward Coke, one of the most disagreeable figures in our history, is one of the most important champions of our liberties. At a dangerous period in the development of the constitutional struggle, it was he who, to gratify his official pride and his personal passions, first revived the theory that the law was not the instrument but the boundary of royal prerogative, and that the Judges were not, as his rival Bacon declared, 'lions under the throne,' but umpires between King and subject. His ferocious power of self-assertion, working through the medium of a legal learning, memory and intellect seldom equalled even on the English Bench, alone caused his brethren, who were almost equally afraid of Chief Justice Coke and of King James, to break for a season with the Tudor traditions of their office. At this time the law of the Constitution was not yet interpreted by an established custom of the Constitution, and it lay with the courts to decide many questions arising between King and Parliament, or between King and subject. As the law was often obscure and the precedents contradictory, a very slight political bias could, without scandal, be decisive of grave issues. Hitherto the bias of the Judges had been Royalist. They had pronounced for the King in the question of Impositions, in the year that Coke became Chief Justice of the Common Pleas (1606). Under his influence their decisions soon began to take a different colour. In 1613 Coke was punished by being moved, much against his wishes, to preside over the King's Bench. But still in one question after another James met with attempts to thwart his authority

from the quarter where his predecessors had found the most ready support. At last the exasperated King claimed the right to interview the Judges in his own chamber, whenever they were called to decide a question affecting his prerogative. Coke, knowing that this concession would destroy both the independence of his brethren as a body and his own power to dictate their decisions, refused to give way, even when all the rest had capitulated. His obstinacy cost him his seat on the Bench, and even at the Council Board. In the course of the whole reign, no measure that James took to strengthen his authority succeeded half so well as the dismissal of Coke. The Judges at once relapsed into servants removable at the King's pleasure, and sure defenders of his prerogative. But Coke had not striven in vain. He had turned the minds of the young gentlemen at the Inns of Court, who watched him from afar with fear and reverence, to contemplate a new idea of the constitutional function and of the political affinities of their profession, which they were destined in their generation to develop in a hundred ways, as counsel for England gone to law with her King."*

---

* In the concluding paragraph of a recent essay on "The Influence of Coke on the Development of English Law" read before the International Congress of Historical Studies held in London in 1913 (edited by Prof. Vinogradoff and published by the Oxford University Press), Dr. W. S. Holdsworth said of Coke's writings (at p. 311):

> "If their influence upon some parts of our modern law has not been wholly satisfactory, let us remember that they have preserved for England and the world the constitutional doctrine of the rule of law.
>
> The effects of this doctrine were destined in the succeeding ages to be felt beyond the bounds of England, beyond the bounds even of English-speaking peoples — in all places and at all times wherever and whenever men have had the will and the power to establish constitutional government. We may surely claim that these large results of this part of Coke's work upon the civilized world of to-day entitle the most English of our English common lawyers to a place among the great jurists of the world."

If the man of whom these words could be spoken was removed from the bench because he had the courage to deserve them we should remember the fact when we are asked to adopt a system which would inevitably be used in an attempt either to break the spirit of our judiciary or to change its character.

The framers of the Massachusetts and of the United States Constitutions were familiar with these English struggles * and they provided a system which would give us fearless judges. As a result of their work we have had for one hundred and thirty-three years a long line of judges who have not been afraid to administer justice according to law without regard to political influences or popular prejudice.

In contrast to this experience the strong movement now going on in New York to return to the appointive system after a long experience with the elective system is significant. It is to be hoped that Massachusetts will always keep the system which produces strong men; and that the Massachusetts bar may be permanently spared the demoralizing influence which is an inevitable result of an elective judicial system, of the temptation for many men to consider what political influence will affect a judge's mind instead of arguing a case before him fairly on its merits.†

(2) As to the Supreme Judicial Court.

As a result of the discussion at the annual meeting and later at the special meeting of the Association which followed the recommendations of this committee last year, the following bill, copies of which had been sent to every member of the Association, was approved by the Associa-

* The help which one gets from a sense of historical perspective in learning fully to understand our institutions emphasizes the importance of the requirement by the Bar Examiners in Rule VII. A (discussed elsewhere in this report) of some general knowledge of English history.

† The direct relation between the attack on the judicial system of the State and the movement for the compulsory initiative has been pointed out. One of the organizations which petitions for the compulsory initiative, H. 181, is also a petitioner for an elective judiciary with five-year terms, H. 185, and it was frankly stated by a representative of this organization this year before the Committee on Constitutional Amendments that he thought the adoption of the compulsory initiative would settle the question of an elective judiciary, recall of judicial decisions, etc., all of which measures he was supporting.

tion at the special meeting held at the American House, Boston, on February 14 last (see Mass. Bar Assoc. Rep., Vol. IV., pp. 137–139).

AN ACT RELATING TO THE BUSINESS OF THE SUPREME JUDICIAL COURT.

SECTION 1. All cases and matters in any county that may be required to be heard and determined in the Supreme Judicial Court by the full court shall be heard at the sittings of the court at Boston, but the court may for any reasons that it shall consider sufficient in the circumstances sit for the purpose at any other place in the commonwealth and may transact at any such place any of the business of the full court. All such cases and matters shall be entered with the clerk of the court for the commonwealth *and the court may make such rules or orders, general or otherwise, for the hearing of such cases as it deems proper.* The court shall be always open for the transaction of any business of the full court and sittings shall be held at such times as the court shall from time to time appoint with a view to the despatch of business and the interest of the public.

(Rev. Laws, c. 156, sec. 15, questions of law; sec. 17, cases and matters at law or in equity; Rev. Laws, c. 159, sec. 19, equity appeals.)

SECTION 2. All cases and matters that shall be pending before the full court in any place except Boston when this act takes effect, and shall not have been finally heard by the court, shall be forthwith transferred by the clerks of the courts, respectively, with the papers relating to the same, and entered with the clerk of the court for the commonwealth, without the payment of any additional fees on account of such transfer.

SECTION 3. Sittings of the Supreme Judicial Court for the despatch of such business as is not required to be dealt with by the full court shall be held by one

justice at such places and times as the court or any justice thereof may from time to time appoint in order to secure the prompt despatch of such business, but no jury shall be summoned for such sittings unless the court or a justice thereof orders that the clerk of the court in the proper county summon a jury.

(The provision that the sittings shall be held by one judge takes the place of Rev. Laws, c. 156, sec. 21, repealed. As to summoning a jury, *cf.* Rev. Laws, c. 156, sec. 16, and c. 159, sec. 37, the latter being more accurate.)

SECTION 4. Sections 16 (sixteen) and 21 (twenty-one) of chapter 156 (one hundred and fifty-six) of the Revised Laws are repealed.

SECTION 5. This Act shall take effect on the 1st day of September in the present year.

The foregoing bill is submitted to the legislature upon a petition representing:

> "That there is need of legislation to give the Supreme Judicial Court greater freedom in the arrangement of its work and the division of its time in the interest of the prompt and efficient administration of justice."

The words in italics in Section 1 were suggested by Hon. James M. Morton, who sent the secretary of the Association the following letter:

"FALL RIVER, Feb. 16, 1914,
487 Roch St.

JAMES A. LOWELL, ESQ.,
Sec. Mass. Bar Assn.

MY DEAR SIR: I venture to send enclosed to you with the pencilled amendment in the margin. If there are any scruples it may tend to remove some of them notwithstanding the court now has the power. When talking with lawyers in out-lying counties about the matter in times past I have suggested to them that the court might group cases from different counties. This is in that line and is suggested for the purpose of making it visible in the proposed statute. My own experience has satisfied me of the need of such legislation as is proposed.

Very truly yours,

(Signed) JAMES M. MORTON."

In connection with this bill the following statement was sent by this committee to every member of this Association and to the members of the Joint Judiciary Committee of the Legislature:

STATEMENT IN SUPPORT OF SUBSTITUTE BILL SUBMITTED BY THE MASSACHUSETTS BAR ASSOCIATION RELATIVE TO THE BUSINESS OF THE SUPREME JUDICIAL COURT.

This bill was prepared to carry out the votes at the annual meeting of the Massachusetts Bar Association, held at the State House on December 23, 1913. The bill was submitted to the Executive Committee of the Association and approved by that committee at its meeting on February 2, 1914. A printed copy of the bill was sent to every member of the Massachusetts Bar Association, which is made up of lawyers living in all parts of the state. A meeting was called by the Association of members of the bar and held at the American House on February 14, 1914, and the bill was submitted to that meeting and was approved.

FIRST SECTION.

The first section provides that the sittings of the full court shall be held in Boston unless for some special reason the court decides to sit elsewhere.

This is not a new suggestion. It has been talked about at various times for the past thirty years or more. It was recommended by the Commission appointed by the Governor in 1909 to investigate the causes of delay in the administration of justice (see Report, House Document No. 1050, of 1910, p. 15). The plan was thereafter unanimously approved by this Association at the annual meeting of 1911, at which there was a large attendance (see Massachusetts Bar Association Report, Vol. 1, p. 60).

The important reason for this plan is the interest (1) of the clients for whom the courts exist; (2) of the public which pays the bills.

From these points of view, as is constantly pointed out, the central problem in the administration of justice in this country to-day is the waste of judicial power, and one of the main causes of this is the common legislative practice of tying the courts down by hard and fast rules which prevent the elastic arrangement of their time to meet the pressure of business as it varies from time to time.

The clients in counties other than Suffolk, unless their counsel will agree to present the case at a Boston sitting, have to wait for the full court to come once a year to their county. This arrangement will not stand the efficiency tests which are being applied to the rules imposed upon the courts all over the country.

If the full court sat only in Boston, it could arrange its work so that there could be continuous sessions throughout the year, as required by the pressure of business, and convenient arrangements could be made to hear cases from each county at certain times so that counsel from other counties would not be delayed by Suffolk business. It is probable that if it had a free hand the court would plan its sittings in Boston with sufficient elasticity so that cases from any part of the state could be argued within a month or two after trial while the cases were still fresh, provided that the counsel or the court of trial would put the record in shape for presentation.

We believe that the members of the bar who are afraid that if this change is made they will be put to serious inconvenience by having to argue their cases in Boston are mistaken in their feeling. The judges of the Supreme Court wish to respect the convenience of the bar so far as is compatible with the discharge of business in the interest of the public, and we believe that they can be trusted, if they are given a free hand in the arrangement of their time, to provide for the reasonable convenience of the men from the different parts of the state who have cases to be argued before them, and *the value of this opportunity for prompt*

hearing of appeals, both to members of the bar and to citizens in all parts of the state, will far outweigh any inconvenience.

SECTION 2.

This section of the act merely provides for certain details in connection with the first section.

SECTION 3.

This section provides that, instead of the absolute requirements for sittings of single justices of the Supreme Court in different parts of the state, they shall sit for such business as may come before them at such times and places as the court may appoint in order to secure the prompt despatch of business in the interest of the public. Here again there is nothing new or startling in the idea. This plan of having the judges sit where the circumstances of the litigation before them reasonably require has been in successful operation in Land Court proceedings for fifteen years or more without complaint from the bar or from the community. The practical working of it has been that most of the cases have been tried in Boston by preference of counsel, but from time to time cases arise in Berkshire county, or in Essex county, or in Franklin county, or elsewhere, which ought to be tried in those places, and then the judge goes there and tries them. There is no reason whatever why the judges of the Supreme Court should not be given the same discretion as to the arrangement of their time as that which has worked well in the Land Court.

It is said that these changes in the sittings of the full court and the single judges would give the court time to deal with all its present business.

As to the trial of issues by jury, the court now has discretionary authority to send all jury issues, either in probate or equity cases, to the Superior Court for trial (see Revised Laws, c. 159, sec. 36; Rev. Laws, c. 162, sec. 25). This discretion is not disturbed, but

is reinforced by abolishing the absolute requirement (in Revised Laws, c. 150, sec. 21, and Rev. Laws, c. 170, sec. 10), that juries shall be summoned at certain specified times. The expectation and intention of this bill is that the Supreme Court shall send such jury issues to the Superior Court as a general rule, but the power is retained in the Supreme Court to try the case itself if it decides to do so.

The abolition of the fixed requirement of summoning juries will be a saving of expense.

For these reasons we hope that the bill will pass.

MASSACHUSETTS BAR ASSOCIATION.

The bill approved as above will again be submitted to the legislature.

There were several other bills relating to the Supreme Court which were considered by the Judiciary Committee, but none of them were passed except the bill increasing the appropriation for clerical assistance from $2,500 to $4,000 as recommended last year by the Attorney-General and also by this committee (Mass. Bar Assoc. Rep., Vol. IV., p. 86).

The most important features of the other bills were:

1st, to transfer the equity and other original jurisdiction to the Superior Court and make the Supreme Court purely a court of law.

After a good deal of discussion at two meetings this Association voted against that proposition at the special meeting in February last (see Mass. Bar Assoc. Rep., Vol. IV., p. 139).

2d, in substance that the present law which gives two trials on the facts in will cases should be changed so that there should be only one trial, and that in case issues are framed for a jury these should be tried in the Superior

Court, perhaps on some plan of procedure similar to that now in effect in the Land Court practice.

This whole subject of the relative functions of the Supreme and Superior Courts is still under consideration and further suggestions may be made for consideration later in the year.

(3) The Simplified Procedure Act of 1913.

In the recent case of *Tighe* v. *Maryland Casualty Co.*, 216 Mass. 460, the Court construed Section 3 of this act as follows:

> "This is a motion presented to the full court, signed by counsel representing all parties, that a bill of exceptions regularly allowed by a judge of the Superior Court be amended by the addition of a material statement. It is urged that power to grant petitions of this nature is conferred by St. 1913, c. 716, entitled 'An Act to simplify Legal Procedure.' It is provided by s. 3 that 'The Supreme Judicial Court, upon any appeal, bill of exceptions, report or other proceeding in the nature of an appeal in any civil action, suit or proceeding shall have all the powers of amendment of the court below.' The word 'amendment,' when found in statutes relating to procedure and practice, commonly refers only to pleadings and process. See R.L., c. 173, ss. 48–53, 69, 70, 121; c. 163, s. 167; c. 159, s. 6; c. 197, s. 14; c. 193, s. 32; c. 158, s. 3; c. 167, s. 18; c. 203, s. 19. It would require explicit and unequivocal language to warrant attaching to it a different meaning. There is nothing in St. 1913, c. 716, to indicate that it is used with another signification. On the contrary its whole tenor shows that the word is employed in the same sense as elsewhere in statutes touching practice. The obvious purpose of the phrase above quoted is to enable this court to remove difficulties of pleading and process in the way

of final disposition of a cause which appears to have been fully and fairly tried on its merits, and otherwise is ripe for judgment. It has an ample field for operation without stretching it to include that which is not within its natural significance.

There are inherent obstacles in giving the statute any other construction. The word 'amendment' does not easily lend itself to an interpretation applicable to bills of exceptions, reports or appeals. These constitute the record of the action of the trial judge. Facts upon which his conduct, rulings, and decision were founded cannot in the nature of things be changed justly without his consent. Allowance of a bill of exceptions by a judge is a certificate by him of its truth. So long as he is alive and not incapacitated, he alone with propriety can determine whether a modification is needed to express the full truth. A report presents for the consideration of this court a definite question or questions of law. This is the act of the judge. It is difficult to conceive of a change in such a matter made by any one other than the judge who has framed and signed the report.

The proper way to accomplish that which this petition prays for — since the enactment of St. 1913, c. 716, as well as before — is to ask that the exceptions may be discharged for purpose of correction by the trial judge. *Ashley* v. *Root*, 4 Allen, 504."

It is a matter for regret that the language of the statute was not made sufficiently inclusive to avoid the result reached by the Court. In order to assist the Court in reducing to a minimum the formalities incident to the presentation of a case we recommend that the statute be extended to cover any bill of exceptions or report or other method of procedure in express terms in order to avoid the difficulty.

That there is no practical objection to this seems clear.

The Supreme Judicial Court has authority to allow a bill

of exceptions over the head of the judge who presided at the trial on petition to establish exceptions under R.L. 173, Sect. 110, cf. *Fitch* v. *Jefferson*, 175 Mass. 56. After a bill of exceptions has been allowed and entered in the Supreme Court that court has "exclusive jurisdiction of it and the judge below cannot alter it without the authority of this court." See Gray, C.J., in *Perry* v. *Breed*, 117 Mass., at p. 164.

The practical result is that although the Supreme Court has "exclusive jurisdiction" of the bill of exceptions it must give permission to the Superior Court judge and send the bill back to him to get permission from him to exercise its exclusive jurisdiction before allowing an amendment which all parties are ready to agree to without formalities. Such a result would be impossible under the more open English practice upon which the statute in question was largely based,* unless there was some reason why the Court might

* The following brief history of the English and of the United States Federal practice recently prepared for the American Bar Association by John L. Thorndike, Esq., is interesting in this connection:

"At common law, mistakes in law made by a judge in the course of a trial could not be corrected on a writ of error because the rulings were not entered of record (2 Co. Inst. 426–7). A bill of exceptions was given to remedy this difficulty in the year 1285 by the Stat. Westm. 2, 13 Ed. 1, c. 31 (2 Tidd Pr. 862), and in England it might have been used until 1875, when it was abolished by the Judicature Act (Wilson's Jud. Act, 6th ed. 434, not to Order 58). No other means of correcting such mistakes by appellate proceedings has ever been provided by U.S. statutes, and the U.S. courts are still acting under the Stat. Westm. 2 without substantial change (*Pomeroy* v. *Bank of Indiana*, 1 Wall, p. 599); *Generes* v. *Campbell*, 11 Wall, p. 198). The bill of exceptions fell into disuse in England many years before the Judicature Act, and a simpler and more convenient procedure was substituted for it. In *Prudential Assurance Co.* v. *Edmonds*, 2 App. Cas., p. 508 (1877), where a bill of exceptions was used, Lord Blackburn said, 'The question comes before us upon a bill of exceptions, and that is a very inconvenient mode, and it is now a very unnecessary mode of raising it,' and Lord Gordon (p. 516) expressed his relief 'in thinking that this may be considered as about the last case which will arise under a bill of exceptions in this country.'

The practice adopted in its place was to move for a new trial for misdirection or improper admission or rejection of evidence (2 Arch. Pr.

not be willing as a matter of discretion to accept the agreement of the parties. It is, of course, possible that such cases might arise, for instance, if the acceptance of the agreement would be likely to result in a new trial at the public expense, or if the agreement appeared to be unconscionable, the Court would probably wish to hear from the judge who tried the case. But the court can control such cases just as well if it is given power to accept the agreement and avoid delay as it can now. Ordinarily counsel may be relied upon to look after themselves. Except as above mentioned we fail to see that the judge who presided at the trial has any interest in the bill of exceptions after it has left his

(12th ed.) 1519, 1520; 2 Tidd. Pr. 907; Anonymous, 2 Salk, 649) or to enter the verdict or a non-suit in accordance with leave reserved at the trial (2 Arch. Pr. 1530; 2 Tidd. Pr. 900). The motion was heard upon the judge's notes of the evidence and of what took place at the trial (2 Arch. Pr. 1538). This became the common mode of bringing before the court in banc questions arising during the trial, but, as the evidence and proceedings at the trial were not entered on the record (see *Inglee* v. *Coolidge*, 2 Wheat, p. 368), the decision could not be reviewed in a higher court till 1854, when the Common Law Procedure Act, ss. 34–39, gave an appeal (2 Arch. Pr. 1545–1547).

Since the Judicature Act all appeals are by way of rehearing and are heard upon the same materials as were used in the court below (Order 58, rules 1, 4). There is no formal case made up or record (see the Lord Chancellor's statements as to Reformed Procedure in the Harvard Law Review, Dec., 1912, pp. 105–107). The extent to which the evidence shall be printed is kept within the control of the court (Order 58, rule 12). By this mode of proceeding nothing is required to be done after the trial except to have the notes written out. The long and expensive wrangle and waste of the judge's time involved in settling a bill of exceptions are avoided, and the whole case is brought before the appellate court, instead of so much of it as is supposed to show that the judge made some mistake at the trial. Each party is at liberty to select from the whole case what he considers material, and does not run the risk of losing his case by the omission of something in the bill of exceptions, or by the misrepresentation of the evidence in an attempt to condense it. (Cf. the Massachusetts statute 1908, c. 177, which provides for sending up the whole evidence when the wrangle over the bill of exceptions lasts three months.)

If this system were adopted the expense of printing the case would not be increased, because the parties might be left to choose for themselves what shall be printed, and any abuse of the right could be checked by disallowing the costs, while the far greater expense of settling a bill of exceptions would be saved."

hands if the parties and the Appellate Court agree to it. The only persons interested in the result of the litigation are the parties. Accordingly we respectfully submit that Chief Justice Bigelow was mistaken in the case of *Ashley* v. *Root*, 4 Allen, 504, in saying that the reason why an amendment to a bill of exceptions could not be allowed without the consent of the judge who presided at the trial was because the amendment might, by changing the whole aspect of the case, "do injustice to him."

We see no more harm in having the Supreme Court allow the amendment than there is in having it done by another judge of the Superior Court when the judge who originally signed the exceptions is dead or incapacitated.

In this connection we call attention to the following passage from the recent report of the committee of the National Economic League:

> "There is too much of what may be called record-worship; too much attention to the common-law record as an end in itself. The function of a judicial record should be to preserve a permanent memorial of what has been done in a cause; the court should be able at all stages to try the case, not the record, and, except as a record of what has been done may be necessary to protect substantive rights of parties as the suit progresses, the sole concern of the court with respect to the record should be to see to it that at the termination of the litigation it records the judgment rendered and the causes of action and defences adjudicated."

Under Chapter 35 of 1914 extending the simplified procedure act to the Municipal Court of Boston, as the proceedings before the appellate division of that court are upon informal report instead of a formal bill of exceptions the rule in *Tighe* v. *Maryland Casualty Co.* would not seem to apply.

(4) Civil Appeals from Police, District and Municipal Courts.

The Existing System of Appeals is bad.

The existing system of civil appeals from these courts other than the Municipal Court of Boston is a poor arrangement. It results in a waste of the public time, money and judicial power. It encourages inefficiency. It encourages worthless appeals for delay. It prevents the prompt and final settlement of the small cases of poor people who cannot afford dilatory and expensive litigation. It is one of the really weak spots in the judicial machinery which justifies popular complaints, usually attributed to other and imaginary causes. And yet it has been allowed to continue largely because of the indifference of the bar, for most of us are beaten sometimes and then we like to have a chance for a second trial on the facts if the system is badly enough arranged to give it to us. But this Association must stand for something better than that easy-going attitude, or fail in the purpose of its existence, which is to represent the best professional interest in the administration of justice that the Massachusetts bar can produce.

Last year this committee recommended "the extension so far as practicable to the Police, District and Municipal Courts of the law relative to appeals and procedure in civil causes which has been successfully tried in the Municipal Court of Boston under Chapter 649 of 1912" (see Mass. Bar Assoc. Rep., Vol. IV., p. 89).

Since then the system in the Boston court has worked well for another year and is now firmly established and is clearly accomplishing the objects for which it was devised. Members of the bar have noticed a marked improvement in the work of certain judges of the Boston court since the new law placed greater responsibility upon them and so made their work more important.

The figures show the reasons for all this. Under the old system in the Boston Central Court, and still in some of the other courts in the larger districts of the state, an average of nearly half of the cases tried are appealed. In other words, in nearly half of the cases the judge, counsel, parties and witnesses are all wasting their time. Is it likely that judges will take as vital an interest in their work as they would if it were more useful?

We are informed that in 1904 in the Boston Central Court out of 1,851 cases tried 815 were appealed, or between 44 and 45 per cent. Statistics between 1904 and 1910 are not available (owing to our lack of system in compiling such information, pointed out in another part of this report), but in 1910 there were 1,897 cases tried and 785 appealed, or between 41 and 42 per cent. In the outlying Boston courts in 1910, 200 cases were tried and 65 appealed (see report on Inferior Courts of the County of Suffolk, House Doc. 1638 of 1912). There is no reason to believe that if available the statistics from the other lower courts of the Commonwealth would show any different average conclusions. Such results cannot be justified upon the supposed theory of appeals, *i.e.*, the correction of error.

The Remedy is to extend the Plan of the Boston Act.

To carry this out a bill was prepared and submitted to the legislature last winter. A copy of this bill with changes of 1914 inserted is printed in a foot-note.* This

* An Act relative to the jurisdiction and procedure in civil actions in police, district and municipal courts.

Section 1. The superior court shall have original and concurrent jurisdiction with police, district and municipal courts of all actions of contract, tort or replevin in which the debt or damages demanded or the value of the property alleged to be detained does not exceed one thousand dollars; also of petitions to enforce liens under the provisions of chapter one hundred and ninety-seven of the Revised Laws, if the amount of the claim does not exceed one thousand dollars; also of petitions brought under the provisions

bill was submitted to the Association of Justices of District, Police and Municipal Courts of Massachusetts at a meeting

of section twenty-three to thirty, both inclusive, of chapter one hundred and ninety-eight of the Revised Laws, and petitions brought under the provisions of chapter two hundred and twenty-seven of the acts of the year nineteen hundred and nine. The process of a police, district or municipal court shall run throughout the commonwealth for service in any case within its jurisdiction.

SECT. 2. If after this act takes effect a party elects to bring, in a police, district or municipal court, any action or other civil proceeding which he might have begun in the superior court, he shall be deemed to have waived a trial by jury and his right to appeal to the superior court, unless the said action or other civil proceeding is removed to the superior court, as hereinafter provided, in which case the plaintiff shall have the same right to claim a trial by jury as if the action or civil proceeding had been originally brought in the superior court: *provided, however*, that if a declaration in set-off is filed in such action, the plaintiff may of right remove the cause and claim a jury trial, in the manner and upon the terms set out in section three of this act, within the time allowed him for filing an answer to such declaration in set-off.

SECT. 3. No other party to such action shall be entitled to an appeal. In lieu thereof, any such party may, within two days after the time allowed for entering his appearance, file in said court a claim of trial by jury, and an affidavit by his counsel of record, if any, and if none, the affidavit of such party, that in his opinion there is an issue of fact requiring trial in the cause, and that such trial is in good faith intended, together with the sum of three dollars for the entry of the cause in the superior court, and a bond in the penal sum of one hundred dollars with such surety or sureties as may be approved by the plaintiff, or the clerk or an assistant clerk of the court in which the action was brought, payable to the other party or parties to the cause, conditioned to satisfy any judgment for costs which may be entered against him in the superior court in said cause within thirty days after the entry thereof. The clerk shall forthwith transmit the papers and entry fee in the cause to the clerk of the superior court, and the same shall proceed as though then originally entered there, but may be marked for trial upon the lists of causes advanced for speedy trial by jury.

SECT. 4. In any action brought by or against two or more persons in which separate judgments are authorized by sections two and three of chapter one hundred and seventy-three of the Revised Laws, the party seeking removal may specify in his claim of jury trial the parties as to whom such trial is claimed, in which case the cause shall be removed as to such parties only as are specified in such claim, and the court in which the action was brought shall retain jurisdiction as to the remainder. In such case the clerk shall transmit attested copies of the papers in the cause to the clerk of the superior court in lieu of the originals.

SECT. 5. Any party, in lieu of filing the bond above required, may deposit with the clerk the sum of one hundred dollars in cash. A certificate of such deposit shall be issued to the depositor by the clerk, and the deposit shall be transmitted by him, with the papers, to the clerk of the superior court, who shall receipt therefor and shall hold said deposit until the final disposition of the case, when he shall apply the same to the satisfaction of any costs

attended by thirty-three members and was approved in its entirety with but one dissenting vote.

---

awarded against the depositor, and pay the balance, if any, to the depositor or his legal representatives.

SECT. 6. No bond or deposit in lieu thereof shall be required of a county, city, town or other municipal corporation or by a party who has given bond according to law to dissolve an attachment; and the court may in any case, for cause shown, after notice to adverse parties, order that no bond be given. The court in which the action was brought may, upon cause shown and after notice to all adverse parties, permit such removal to the superior court, upon the terms above specified, at any time prior to final judgment.

SECT. 7. There shall be an appellate division of each police, district and municipal court for the rehearing of matters of law arising in civil causes therein. Any party to a cause brought after this act takes effect, who is aggrieved by any ruling on a matter of law by a single justice, may, as of right, have the ruling reported for determination by the appellate division when the cause is otherwise ripe for judgment, or sooner by consent of the justice hearing the same. The request for such a report shall be filed with the clerk within two days after notice of the ruling, and when the objection is to the admission or exclusion of evidence, the claim for a report shall also be made known at the time of the ruling. If the appellate division shall decide that there has been prejudicial error in the ruling complained of, it may reverse, vacate or modify the same or order a new trial in whole or part; otherwise it shall dismiss the report, and may impose double costs in the action if it finds the objection to such ruling to be frivolous or intended for delay. The provisions of chapter seven hundred and sixteen of the acts of the year nineteen hundred and thirteen shall apply to actions brought in any police, district or municipal court, so far as the same may be applicable thereto; and the appellate division of any such court shall have all the powers relating to civil actions tried without a jury given by said chapter to the supreme judicial court. If the party claiming such report shall not duly prosecute the same, by preparing the necessary papers or otherwise, the appellate division may order the cause to proceed as though no such claim had been made, and may in like manner impose costs.

SECT. 8. Such appellate division in any court shall be holden by the justice of such court, and other justices of police, district and municipal courts, not exceeding three in number, assigned to the performance of such duty by the chief justice of the supreme judicial court, but no justice shall sit upon the review of his own rulings. Such assignment may be made for such period of time as such chief justice may deem advisable. Such chief justice shall assign justices of courts within the counties of Essex and Middlesex to sit in the appellate divisions of courts within those counties, shall assign justices of courts within the counties of Suffolk, Norfolk, Plymouth, Bristol, Barnstable, Dukes and Nantucket to sit in the appellate divisions of courts within those counties, and shall assign justices of courts within the counties of Worcester, Franklin, Hampshire, Hampden and Berkshire to sit in the appellate divisions of courts within those counties. Two justices shall constitute a quorum to decide all matters in an appellate division. Sittings of the appellate divisions of the several courts may be held at such times and places as the chief justice of the supreme judicial court may

For the purposes of discussion the plan has two features:

First. The avoidance of appeals on the facts.

Second. The provision for an appellate division for questions of law.

These will be discussed separately.

---

direct. A justice, acting in the appellate division of a court other than the court of which he is justice, shall be allowed reasonable compensation for his services and travelling expenses, to be awarded and paid by the county in which the court in which he so acts is located, in the same manner as if he had acted as a master appointed by the supreme judicial court.

SECT. 9. An appeal shall lie from the final decision of the appellate division to the supreme judicial court. Claim thereof shall be filed in the office of the clerk of the police, district or municipal court within five days after notice of the decision of the appellate division. The appeal shall not remove the cause, but only the question or questions to be determined. The necessary papers shall, at the expense of the party appealing, unless the court shall order the expense to be borne by some other party, be prepared by the clerk, who may require the estimated expense thereof to be paid in advance. The appeal shall be transmitted to and entered in the docket of the supreme judicial court within ten days after notice to the appealing party that the papers are ready for transmission. The expense of such copies and transmission, and the entry fee in the supreme judicial court, shall be taxed in the bill of costs of the prevailing party, if he has paid it. The provisions of section twenty-six of chapter two hundred and three of the Revised Laws, as amended by chapter four hundred and thirteen of the acts of the year nineteen hundred and four shall apply to such appealed cases. If the appellant fails duly to perfect the appeal or to enter the same in the supreme judicial court, the appellate division may upon application of an adverse party, and after notice to all persons interested, order that the appeal be vacated and the decision appealed from affirmed.

SECT. 10. Section forty-five of chapter one hundred and sixty of the Revised Laws is hereby amended by inserting after the word "appearance" in the fifth line thereof, the words: — the allowance of reports which a justice may disallow as not conformable to the facts or shall fail to allow by reason of physical or mental disability, death or resignation; by inserting after the word "trials" in the fifth line, the words: — and the granting of new trials, — and by striking out the word "superior" in the eighth line thereof, and by inserting in the place thereof the words: — supreme judicial, — so as to read as follows: — *Section 45.* The justices, or a majority of them, of the several police, district and municipal courts except the municipal court of the city of Boston, shall from time to time make and promulgate uniform rules regulating the time for the entry of writs, processes and appearances, the allowance of reports which a justice may disallow as not conformable to the facts or shall fail to allow by reason of physical or mental disability, death or resignation, the filing of answers and for holding trials and the granting of new trials in civil actions, and the practice and manner of conducting business in cases which are not expressly provided for by law, and shall submit a copy thereof to the supreme judicial court or a justice thereof, for approval, amendment or alteration.

First.

THE AVOIDANCE OF APPEALS ON THE FACTS.

I. THE RESULTS TO BE GAINED.

(a) *Uniformity.* — The other lower courts have always been governed by substantially the same practice as the Boston court, and there is no reason for any distinction now in the system of appeals, since the Boston experiment has been tested.

(b) *Prompt and final settlement of small cases.* — If the two-trial appeal system is ever justifiable, it is in large cases; yet the present system gives but one trial in large cases and two in small and even trifling ones, causing trouble, delay and expense. Poor litigants are the principal beneficiaries of the proposed system.

The present system invites a defeated party to appeal at the very time when he is piqued by an adverse decision. He often finds that he has saddled himself with costs in the Superior Court which are disproportionate to the size of the case. The proposed system gives ample opportunity for a jury trial, if the parties are not satisfied with the court; but if they are satisfied, a genuine and effective trial is provided.

(c) *Prevention of worthless appeals for delay.* — Under the proposed law affidavits of merits are required for removals. Most parties do not seek delay from the outset, but only when convinced they cannot win; the requirement of removal by giving bond at the outset prevents most removals for delay. If such removals occur, the period of delay will be lessened by the time formerly wasted in the lower court.

SECT. 11. All acts and parts of acts inconsistent herewith are hereby repealed.

SECT. 12. Nothing in this act shall apply to the municipal court of the city of Boston.

SECT. 13. This act shall take effect on the first day of July, in the year nineteen hundred and fifteen.

(d) *The public will get value for the money spent in maintaining the lower courts.* — Under the appeal system, nearly half the cases tried in the lower courts, and nearly all the strongly contested ones, result merely in the waste of the time of the justices, counsel, parties and witnesses. Many of these cases have to be tried over again in the Superior Court, at the public expense, not because of any error, but merely because the losing party desires it. The proposed system will make every trial a real and useful one, unless some error of law is shown.

(e) *The lower courts will no longer be used as fishing grounds, or as means of getting cases on speedy trial lists.* — These practices have been mere abuses of the lower court jurisdiction, producing a merely fictitious business.

(f) *The lower courts will be improved, and judicial work there will attract good lawyers.* — Apart from the isolation of the lower courts from each other (which the justices' association is working to remedy and which the proposed appellate division would do much to remedy) the greatest obstacle to progress has been the want of responsibility under the appeal system.

The Superior Court is responsible to the Supreme Judicial Court, and that court submits its reasons to the criticisms of the profession generally. But the lower courts are responsible to no one; a judge or jury on a new trial may reach a different result, but the lower courts can never be overruled for any stated legal reason.

In most strongly contested cases the judge knows well that his decision will determine only the party to give the appeal bond; and the remarkable thing is not that some judges may take little apparent interest in their work, but that so many judges, working under these conditions, give such careful and conscientious attention to questions upon which they know they are wasting their time.

The proposed change will not only improve the present bench, but will make it easier to obtain good judges in the future.

The work of the proposed appellate division will stimulate the professional interest of those judges who sit in it, and the responsibility for the legal correctness of their rulings will improve all the judges in all the courts.

(g) *The lower courts will gain in public respect.* — The importance of securing respect for the lower courts from all citizens, many of whom have little acquaintance with other courts, cannot be over estimated. A court without responsibility or authority is always a court without respect.

II. Objections answered.

As the following objections were raised to the Boston act before it was passed and entered into its successful operation, they will probably be raised again to the plan under discussion. Accordingly we answer them in advance:

(a) *That it impairs the right to a jury trial.* — This and other objections were answered for Boston by St. 1912, Chap. 649, and the answer is just as good now. They have also been answered by the similar act applicable to the Land Court, and the acts providing for jury waived cases in the Superior Court.

The proposed law prevents no man from getting a jury trial; it simply prevents a preliminary skirmish. The conditions for removal are no more burdensome than the present conditions for appeal, except the affidavit of merits to which no honest litigant can object.

Some have objected to the requirement of a bond for removal, preferring a theoretical equality of choice of forum between the parties, to the practical desirability of discouraging removals for delay by requiring a defendant to furnish reasonable assurance that he intends a real defence. Those

who made that objection forgot that the present appeal system requires a defendant to file a similar bond to remove the case from a tribunal not of his choice, no matter whether he chooses to present his defence before the lower court or not.

The plaintiff electing to sue in the lower court offers the defendant a trial before a regular tribunal established to hear small cases at low cost to the public. If the defendant insists upon carrying the case to the most expensive tribunal, he cannot object to reasonable restrictions, analogous to the present appeal restrictions. The court is given power to allow late removals without bond where necessary to do justice.

(b) *That it is unjust to the poor man.* — This is the exact reverse of the truth. Under the proposed law the poor man and the rich man have a right to one trial of the facts in one regularly established court (either the lower or the Superior Court) and no more. Under the appeal system, the poor man may be bound by the lower court decision if he loses, because of his inability to furnish a bond or to meet other expenses, while if he wins he is immediately deprived of the fruits of victory by an appeal, imposing on him further trouble, delay and expense.

(c) *That our forefathers in their wisdom provided appeals from justices of the peace and lower courts.* — This is true; and they also provided appeals on the facts from jury verdicts, and reviews as of right of verdicts of juries in trials before the full bench of the Supreme Judicial Court. One by one the courts have been freed from the double trial system, first the Supreme Judicial Court (1817), then the Court of Common Pleas (1840), then the Land Court (1910), and then the Municipal Court of the City of Boston (1912). The lower courts of the present day, presided over by trained lawyers, are far different from the justices

of the peace of olden times. Ought they to be perpetually confined to the jurisdiction and practice of justices of the peace? The abolition of the absolute right to two jury trials presided over by the Supreme Judicial Court was probably considered as revolutionary in 1817 as the Boston Municipal Court act was in 1912.

(d) *That the judges of some courts might not prove equal to their responsibilities.* — This might be said of other courts, but no one thinks of legislating for the weakest member rather than for the average. Responsibility produces growth, and want of responsibility produces stagnation. The proposed legislation will produce better results from the present judiciary and will secure better judges in the future. If reforms are to wait until a perfect judiciary is secured under the existing system, they will wait forever.

If any particular court should so far lack the confidence of the bar or the public that it should be deemed unfit to be trusted with genuine judicial functions, the parties have an ample remedy by avoiding that court or removing their cases, with the natural result that the court would make strenuous efforts to regain public confidence, or an improvement would be strongly demanded by the bar. The possibility of such isolated instances ought not to delay a generally needed legal reform. The great majority of the courts are perfectly capable of handling the reformed practice, and need only to be trusted and made responsible.

(e) *That the Superior Court will be flooded with small cases.* — It is now flooded with appeals — can any more cases go up under the proposed system?

When the Boston act of 1912 was passed this objection was raised. Some prophesied that the court rooms of the Municipal Court would be deserted, while plaintiffs flocked to the Superior Court for jury trials or to the outlying lower courts of Suffolk County, in which the appeal

system still flourishes. The advocates of the bill could only argue that the Chicago experience and the Land Court experience here did not warrant any such forebodings, and that plaintiffs in the contract cases that make up, according to the statistics, six-sevenths of lower court business, would have no temptation to begin cases in a court requiring a year or two to obtain a trial, or in a court from which an appeal could cause delay for a year or two at the caprice of the defendant. In such cases neither party is really very desirous of a jury at the outset.

The result in Boston has now shown that such fears were wholly unfounded. Of course, some tort cases are now brought directly in the Superior Court, instead of being begun in the Municipal Court; but most of them went up on appeal anyway, and were not legitimately a part of the lower court business. For the three years preceding the act of 1912, the average number of cases annually entered in the Municipal Court of the City of Boston was 14,863. In 1913 the entries were 14,005, a loss of 858. Of these entries, 441, or about 3 per cent, were removed to the Superior Court. The total losses, plus the removals, thus amounted to 1,299, about the same as the number of appeals for 1910 (the only year for which statistics are available), which was 1,274. In other words, the court had as much business after the passage of the new act as before, and when the cases came to be tried they constituted real business, worthy of the best attention of court and counsel. The statistics for the first eight months of 1914 indicate an annual increase of about 400 entries over 1913.

Likewise the fear that plaintiffs would flock to the outlying lower courts in Suffolk has proved groundless. Statistics gathered from the various courts show a little increase in entries in 1912, doubtless resulting from fear of the unknown practice in the Central court; but in 1913 the

increase disappeared, and these entries resumed their normally small proportions.

(f) *That the bar and litigants demand appeals.* — For a year or two losing parties and their counsel might bemoan the loss of the privilege of appeal, but prevailing parties who are able to secure the fruits of victory without annoyance and delay would have no such feeling. The real interests of the bar, in dollars and cents, are favored by the change, because the waste of time resulting from two trials in small cases is seldom fully paid for; the rewards of small litigation, however protracted, must needs be small. The speedy termination of small litigation would be a financial benefit to the younger lawyers especially, as well as to their clients.

The tendency of human nature is to fight as long as possible, and in the end to take the result, whether favorable or unfavorable. We have learned to do this in the Supreme Judicial Court, the Superior Court and the Land Court; we shall learn to do it in small cases in the lower courts, and the interests of every one will be better served.

It must be remembered that the so-called "right" of appeal is not a natural or constitutional right, but one created by, and subject to the will of, the Legislature. The only constitutional right is the right to a jury trial, which the proposed act protects just as well as the existing appeal system does.

The General Answer to Conservative Fears.

In 1851 the commission on the practice act composed of Benjamin R. Curtis, who soon after became Associate Justice of the Supreme Court of the United States and wrote the famous dissenting opinion in the Dred Scott case, Reuben A. Chapman, later Chief Justice of Massachusetts, and Nathaniel S. Lord, then one of the leaders of the Essex County bar, solemnly declared in their report that

they did "not think it for the interests of justice or the public morals" to allow parties to testify as witnesses (see copy of the report in Hall's Mass. Practice at p. 156). One would have supposed that the sense of humor of some one of them would have prevented what to us of to-day seems a curious statement. At all events about five years after they made it, parties were allowed to testify (1856, c. 188 and 1857, c. 305), and the public morals appear to have stood the strain reasonably well.

The same sort of fearful conservatism is met with to-day in regard to this or that change which is really important if our system is to be improved.

Every now and then, however, things are shaken up somewhat and the machinery of justice is made better or worse in one way or another. Chief Justice Parsons was appointed in 1806 to shake up and improve the practice of that day and he did it, showing the bench and the bar among other things that it was not necessary to have three Supreme Court judges to sit at civil jury trials (see Memoir of Theophilus Parsons, pp. 200–201).

In 1817 as already pointed out two jury trials of right in the Supreme Court were stopped.

In 1839 and 1840 some one persuaded the legislature to change the old system by which a party had a right to two jury trials, once in the Court of Common Pleas and then again on appeal in the Supreme Court.

In 1912 the Commission on the Inferior Courts of Suffolk County, of which Chief Justice Bolster was chairman, persuaded the legislature to make the change in Boston which we now propose for the rest of the state.*

* The Suffolk County Commission stated the matter on pp. 12 and 13 of its Report, House Doc. 1638 of 1912, as follows: "The public owes litigants one hearing on the facts, not two. Under present conditions it gives small cases two, large cases one. This is an unwarrantable luxury of litigation. When a litigant has had one fair trial in a court of his choice or

We submit that there are very sound reasons for making the change and no sound reason whatever for not making it.

Second.

THE APPELLATE DIVISION PLAN.

Besides avoiding duplication of trials on the facts the Boston act of 1912 provided for an appellate division of the Boston Municipal Court to consist of three judges to be assigned from time to time by the chief justice of that court. This came from the following recommendation of the commission on page 14 of their report:

---

acceptance, with a speedy method of correction of legal error, he has had all that the public ought to supply him. The present method of *de novo* retrial of facts is fast becoming obsolete; it is a survival of the justice of the peace and trial justice courts, which are themselves largely of the past; through the ease with which the lower court judgments may be vacated, it precludes respect for the court which enters them; it conduces to lax work of bench and bar; it consumes in legal expense an undue proportion of the amount in dispute, in a class of cases least able to bear such expense; it tends to increase the so-called gambling element of litigation, and there are not wanting evidences that it is fostering a tendency at the second trial to make the evidence fit the needs of the case; in a word, it is a direct encouragement of perjury. Table 5 appended shows that in a very large proportion of appealed civil cases the appeal is taken, not through a desire for a jury trial, or any great expectation of a radically different result, but to effect a settlement more favorable than the finding already made, to gain time, or for some other similar reason. An examination of a year's work in the Superior Court with appealed civil cases shows that less than a quarter were retried, in only 30 per cent of such retrials, or 105 cases, was the result in the lower court reversed, and that the retrial lowered a finding for the plaintiff three times to twice that it increased it. This fact is probably due to the so-called 'compromise verdicts.' A conservative estimate of the annual public cost of Suffolk lower court civil trials, in which the judgment is entirely vacated by appeal, is $15,000. We recommend that such duplication of trials be done away with by compelling a party desiring a jury trial to begin his case in a jury court, or remove thereto if a defendant, through a system of forced election somewhat similar to that recommended by the commission which in 1909 investigated the causes of delay in civil actions. Their recommendation of such elective method was adopted in substance as to trials in the land court, and we are informed that it has worked successfully, and that the removals, though unhampered by expense, have not approached the number of appeals under the former system. This confirms the opinion of that commission that 'the right of trial by jury is little valued or desired by a party until a decision adverse to him has been made.'"

> "It will tend to better judicial work and to the relief of the Superior Court if the inferior court is compelled in the largest possible degree to correct its own errors of law before submitting them to a higher tribunal. With this in view we recommend an appellate division to remedy legal error in civil causes."

This recommendation also applies with equal force to the other lower courts of the state if a practicable method of carrying it out can be devised for the other courts.

The arrangement for the appellate division in the proposed act necessarily differs in detail in the method of selecting the appellate judges because the courts differ, but the general plan is the same. The act would divide the state into three parts which may be roughly described as northeastern, southeastern, and western parts, with an appellate division for each part made up of the regular judge of the court in which the appeal is claimed and three judges assigned from time to time from the courts in that part by the chief justice of the Supreme Judicial Court; two shall make a quorum, but no judge shall sit on appeals from his own decisions. To equalize the salaries of judges while sitting in the appellate division the bill provides that a judge acting in the appellate division *in a court other than his own* would be allowed reasonable compensation for services and his travelling expenses, to be paid by the county in which he acts, "in the same manner as if he had acted as a master appointed by the Supreme Judicial Court." This is only fair because he would be counted absent from his own court on that day and would usually suffer a loss of salary on that account.

The proposed division of the state would group nineteen courts in the northeastern part serving about 1,106,000 people; fifteen courts in the southeastern part (exclusive of Suffolk) serving about 685,400 people; and twenty-six

courts in the western part serving about 843,000 people. These sections should be made large enough to insure strong appellate divisions at all times in each section, and in our judgment three sections are enough for the present. The civil business of Suffolk County is done almost wholly by the Municipal Court of the City of Boston, and the nine outlying courts, which are grouped in the southeastern section, have very little civil business.

It seems appropriate that the justice of the court, in the infrequent cases in which he is not disqualified, should sit in the appellate division. The appellate divisions of several courts would doubtless be held together in one day at some county seat or other convenient place, under the broad power inserted in the proposed statute, thereby saving time and expense. No witnesses would attend, of course, and many cases would doubtless be submitted on briefs. The work of the appellate divisions would doubtless require comparatively few days in the year.

For various reasons, which will be discussed later, it should be noticed that the appellate division would not be a separate court, but would simply be a part of the court in which the case arises. Accordingly the preparation of copies and entry of cases now required on appeals to the Superior Court would be saved, thus causing less expense to the parties and relieving the Superior Court clerk's office of a mass of useless duplicated records which now have to be filed, docketed, indexed and stored at the expense of the various counties.

The Suggestion that the Appeals should go to the Superior Court.

In the discussion of the matter some men have said, "Why not send these appeals on matters of law to the Superior Court?" That can, of course, be done, but we see no

reason why the plan which has had a healthy effect on the Boston court should not have a healthy effect on the other courts.

The fears of men who think there would be too many appeals badly handled and that the Supreme Judicial Court would be flooded by further appeals in small cases are shown to be entirely groundless by the Boston experience, for the number of such appeals has been reduced.

In 1911 the number of cases which originated in the Boston court and went through the Superior Court to the Supreme Court was 15.

In 1912 the number was 19.

In 1913 under the new act the number of cases which went through the appellate division of the Municipal Court to the Supreme Court was 11.

Out of 19 cases carried from the appellate division to the Supreme Court and there decided between Jan. 1, 1913, and September, 1914, there were only 2 reversals.

The lesson of this is that if we put responsibility on men they will meet it.

We summarize the reasons why we believe the appellate division plan is better than the Superior Court plan, as follows:

1. The practice in Boston and elsewhere should be uniform. This will make it so.

2. The useless accumulation of copies and duplicated records will be avoided.

3. The appellate division would take pride in gaining the approval of the bar by good work and should produce fully as good results as the casual determination of law points in small cases by some one of twenty-eight Superior Court judges in the midst of many other kinds of pressing and important business. An appeal from one single judge to another single judge is always a poor arrangement.

4. The appellate division could undoubtedly unify and improve practice in the lower courts by decision, suggestion, and discussion far better than the rotating single justices of the Superior Court who have their own troubles and are not as familiar with the lower court conditions. The best of the lower court judges understand their business better than other people because they are doing it.

5. The younger members of the bar could without great expense to themselves or their clients gain the opportunity and experience of saving, briefing, and arguing questions before a court in banc. This educational aspect of the plan is worth serious consideration. Most law schools in the country are trying to train young men to brief and argue in moot courts. A real court is much better and is needed by men who have to gain their experience and much of their knowledge after admission to the bar.

6. The possibility of assignment to the appellate division would prove a strong incentive to good work for the lower court judges and would help to destroy the feeling which some supercilious people have that only a third class man would or should accept a position in the lower courts. It has become a commonplace that the lower courts coming in direct contact with the mass of the people are of the first importance and demand first class men. Here is a practical measure that will help greatly to get them.

Constitutional Questions.

During the discussion the constitutionality of the plan has been questioned in two ways. These doubts must be removed.

1st. It has been suggested that the plan of assignment to the appellate division by the chief justice of the Supreme Court would be an interference with the appointing power of the executive.

But this is not so. No new court is created and the legislature has always had the power to abolish a court and transfer its work to another court or to transfer the work from one existing court to another (see article on the Power of the Legislature to create and abolish Courts, 21 Law Reporter, p. 65, June, 1858).

Since St. 1885, Chap. 132, every justice and since St. 1906, Chap. 166, every special justice appointed to the lower courts has had jurisdiction to sit in any one of the lower courts throughout the state when he is called in as provided in the statute. The same is true of the various probate courts of the state which frequently call in judges from other counties under R.L., Chap. 164, Sects. 4, 5. The legislature is continually increasing or decreasing the powers of courts and so long as it does not require them to go outside of judicial functions it can develop the judicial system in any way it pleases except that it cannot abolish the Supreme Judicial Court,* which is the only court embodied in the frame of the constitution (see Mass. Const., Pt. I., Art. XXIX.).

Accordingly the provision for the assignment of judges to consult occasionally and assist in deciding questions of law in the various lower courts before those questions are carried to the Supreme Court is no more the creation of a new court requiring special appointment by the governor than the statutes providing for the appointment of masters and auditors.

Wales v. *Belcher*, 3 Pick. 510.
Dearborn v. *Ames*, 8 Gray, 1.
Brien v. *Commonwealth*, 5 Met. 508.

* The fact that the legislature might change the name of the court of last resort does not affect the correctness of the statement in the text. There must always be a court of last resort and every judge appointed to that court would be entitled to sit in every such court, whatever its name. He could not be legislated out of office (see 21 Law Reporter, at p. 70).

People v. *McCauley*, 1 Cal. 379.
Jones v. *Albee*, 70 Ill. 34.
Randolph v. *Baldwin*, 41 Ala. 305.
State v. *Bartholemew*, 176 Ind. 182.
For early history of Boston Municipal Court see 2 Law Reporter 225, Dec. 1839.

If the objection just discussed had any foundation, it could readily be cured by limiting the right or duty to sit in the appellate divisions, to justices appointed since May 3, 1885. Since that date, as already pointed out, a justice of one court has had the right or duty to sit in another upon request, and that right or duty has been part of the function of the judicial office to which he was appointed. Such a provision would exclude only five of the older judges.

2d. It has been suggested that the plan of assignment by the chief justice of the Supreme Court would be unconstitutional because it would impose executive duties on the chief justice in violation of the 30th article of the bill of rights.

This seems to us another bugaboo. It is partly answered by the discussion of the last point. In dealing with a constitutional question of this kind it must always be remembered, as some judge has said, that "it is a constitution which we are construing." The Massachusetts constitution, unlike the legislative hodge-podge so common among western states, is merely a framework of government providing certain great fundamental principles and restraints for the guidance of the state. It does not attempt to draw lines too closely and in applying a provision like the 30th article of the bill of rights on the division of functions many questions of degree must be settled by common sense. The line was pretty clearly drawn by Chief Justice Gray in the case of the Supervisors of Elections, 114 Mass., pp. 249–250, at matters "incident to the administration of justice," and the opinion in that case seems to answer the

present question completely. The framers of the Massachusetts constitution were far-sighted enough not to dogmatize about the details of the judicial system. They realized that the judicial function necessarily involved a certain amount of administrative or executive detail such as the assignment of judges, etc. If this were not so there would be no point in having a chief justice of any court. The Supreme Judicial Court is the head of the judicial system of the state and by writ of mandamus or of prohibition can control every judge in the state. Our subsidiary courts do not constitute a group of independent chancellors. However loose the system may be considered from a critical point of view it is still a system and the chief justice of the Supreme Court is at the head of it. What administrative duties incidental to his chief judicial functions he shall be given is a matter of detail for the legislature to decide. The constitution does not go into it. It would be absurd to say that that constitution prevented the closer unification of the system for the purpose of efficiency. That was not the purpose of the bill of rights or of John Adams or Samuel Adams or Theophilus Parsons, or whoever else had a hand in it. They built better than that.

Conclusion.

We submit therefore with confidence that there is no constitutional objection whatever to the plan of providing for the assignment by the chief justice of judges for this occasional appellate work. Of course, if it is considered better policy to give the power of assignment to the governor that can be done; but on the question of policy we believe that as the chief justice will necessarily be more familiar with the work of the appellate division from an occasional review of their decisions he is the proper person to do the work of assignment. This suggestion is in line with the

most carefully considered plans for greater efficiency now being formulated by the American bar throughout the country.

The Boston Court is not the only instance in which the legislature has adopted the plan of assignment by a chief judicial officer. By Chapter 555 of 1910 the power of assignment was given to the Chief Justice of the Superior Court so that he can arrange the work of the twenty-eight judges of that Court. We believe that Chief Justice Rugg and his successors can be trusted with a power similar to that which is given to Chief Justice Aiken and Chief Justice Bolster and their successors. Surely no one would seriously suggest for constitutional or any other reasons that the powers of assignment of the two latter Chief Justices should be transferred to the Governor. It is purely a matter of administrative detail in the administration of justice, just as much so as it was before 1910 when the assignment of judges under R.L., Chap. 158, Sect. 9, Chap. 157, Sects. 5, 8, and Chap. 201, Sect. 2, was in the hands of a majority of the justices of the Superior Court.

That the appellate plan is an experiment is no objection to it. It is not an untried experiment. If it does not work well it can easily be changed, but the time to try it is the present time in connection with the plan to abolish appeals on the facts. That was the way it was tried in Boston and it succeeded.

General Conclusion.

The scheme of the whole bill and to a very large extent the exact words of the bill have been approved by the bar and the legislature as shown by Chapter 649 of 1912, Chapters 430 and 726 of 1913, and Chapters 35 and 409 of 1914.

We recommend the passage of the bill as printed.

(5) Legislative Procedure and Drafting.

The legislature adopted the following order:

> "*Ordered*, That a special committee, to consist of three members of the Senate and six members of the House of Representatives, be appointed to sit during the recess of the General Court to consider what changes in the general laws and in the rules of the General Court, and, if necessary, in the Constitution of the Commonwealth, should be made with a view to improving the methods by which measures are prepared, presented to and acted upon by the General Court, so that the sessions may be shortened, the expense of them may be reduced, and in order that proposed laws may be more carefully considered and more accurately drawn, and in order to prevent such frequent revision and amendments of the laws and additions to them as is now necessary. The committee shall also suggest such changes in the general law as will reduce the number of special acts.
>
> The committee shall report to the next General Court on or before the ninth day of January."

This committee is now in session. The order is very broad and covers several lines of inquiry.

First. The importance of studying the subject of legislative drafting and reference service were pointed out in last year's report (Mass. Bar Assoc., 4th Rep., p. 91–92).

A great deal of drafting work is now done by the Committees on Bills in Third Reading and their regular assistants, but it is not their fault that everything is so inconveniently arranged that it is impossible for them to do the work as carefully as it should be done. Bills of all kinds come to them after they have left the committees and taken two readings in the house, often when everything is being rushed to shorten the session.

We respectfully suggest that this work should be done before the bill takes its first reading in the house.

We believe also that, in view of the mass of bills to be considered by the members of the legislature and the fact that most men have little experience in the drafting of statutes and the careful use of words needed to make a statute clear, it is important that a drafting force should be employed of chosen men to do the work carefully and to test each act in the light of the constitution and the existing statutes and principles of law. Whether these men should be organized into a special "bureau" or should be called "parliamentary counsel" or should simply be assistants to a drafting committee of the legislature is a matter of detail for the Committee of the Legislature to consider. But the work ought to be done somehow and such expense in salaries as would be necessary is negligible when compared with the cost to the community of badly drawn laws including the using up of the time of all the judges and other law officers in the State in finding out the meaning of many statutes which ought to be drawn clearly in the first place.

The State ought not to be put in doubt as to whether the tax day has been repealed by an election law, as was the case last year, because the election law was so hastily put through that no one had a chance to test it carefully.

We suggest, therefore, that every bill reported by a committee before it gets into the house or senate for its first reading and every bill substituted for an adverse committee report before it takes its second reading should go to this drafting body, and that every amendment adopted in either branch should also be submitted to them.

Second. It is to be hoped also that changes may be made in regard to the introduction of new business which will not only relieve the legislature but will also give the public a better opportunity to examine proposed legisla-

tion. Our system of public legislative hearings is excellent as a means of securing criticism and suggestions relative to pending measures, but its effectiveness is lessened by present unbusiness-like arrangements for the introduction of bills.

The legislature is elected early in November. The session begins the first week in January. During the two intervening months all the clerical detail of getting bills filed and printed and ready for distribution might be provided for so that the legislature could begin business promptly and those of the public who are interested in the various matters would have reasonable notice and time to formulate their suggestions with more consideration for the assistance of the legislature. But instead of this these two months are wasted and under the 12th Joint Rule about two thousand or more bills on every conceivable subject and of varying length and complexity, are dumped into the clerk's office in the first two weeks of January. Many of them are not printed until February. In the laudable desire to shorten the session, hearings begin before all the bills are printed. The result is that it is very difficult to get the bills on various subjects together for careful study and criticism before the hearings on many of them are held, and everything is as inconveniently and unnecessarily congested at the beginning of every session as it can possibly be. No well managed business would tolerate such a condition of affairs, and there seems no sound reason why the clerical detail of the legislature should not be put on a convenient and business-like basis. Certainly there is nothing sacred about the traditional parliamentary habit of having bills and petitions formally introduced by members before they are printed. If all bills on individual petitions were required to be filed by December 10th and printed by January 1st they could be formally introduced just as well after the legislature met. The important thing is that

people should be able to find out earlier what proposals are made. Of course, the legislature could always admit late business for special reasons through the Committee on Rules, but the bulk of the material should be in and ready for discussion when the session begins. In regard to petitions by city or town officers for legislation on matters of local importance some less stringent rule might be made without interfering with the general plan.

(6) The Bill to allow Resignation from the Bar.

The following bill was introduced during the session (House Bill 1449) :

> SECTION 1. Section forty-four of chapter one hundred and sixty-five of the Revised Laws is hereby amended by adding, at the end thereof, the following sentence: An attorney may file a petition in the Supreme Judicial Court or the Superior Court for leave to resign and thereupon such proceedings shall be had as the court shall order and the court may, if it seems proper so to do, decree, upon such conditions if any as the court may impose, that the petitioner have leave to resign, and thereupon the petitioner shall cease to be an attorney.
>
> SECTION 2. Section forty-five of said chapter is hereby amended by inserting after the word "removed," in the first line thereof, the words, — "or who has ceased to be an attorney."

After consideration it was approved by the Committee on Legislation and the Executive Committee and was supported. The Judiciary Committee reported the bill favorably, but it was defeated in the House. The bill was favored as offering an opportunity in some cases to avoid the expense and unpleasant features of disbarment proceed-

ings and at the same time to keep the whole matter and the subsequent conduct of the individual concerned within the control of the Court. We recommend that the support of the bill be continued by the Association.

(7) Judicial Statistics.

In the report of last year (see Mass. B. A. Rep., Vol. IV., pp. 91–92) this committee discussed and recommended the adoption of a better system of collecting and compiling judicial statistics, and stated the reasons at some length. A bill* was introduced and supported with the authority of the Executive Committee, but was not passed. We again recommend this legislation with any improvements which may be suggested, for the reasons stated in last year's report. The unfortunate experience (referred to in last year's report) of recent important state commissions in finding no adequate system of reports of the judicial work of the State seems a sufficient illustration of the defects of the present system of having incomplete reports made to different state departments instead of centralizing the whole work in the official Bureau of Statistics which exists for the purpose of studying and developing this branch of the state work into an efficient system.

(8) Contingent Remainders.

We submit for consideration and criticism the following proposed law and discussion which have been handed to the committee.

This bill is substantially the same as a bill which was passed in the House and to its third reading in the Senate in 1891 and on 6th June was referred to the next legislature (House 391).

* H. 1448.

AN ACT CONCERNING CONTINGENT REMAINDERS.

1. A contingent remainder shall take effect, notwithstanding any determination of the particular estate, in the same manner as it would have taken effect if it had been an executory devise, or a springing or shifting use and shall, like such limitations, be subject to the rule respecting remoteness known as the rule against perpetuities, exclusively of any other supposed rule respecting limitations to successive generations or double possibilities.

2. This act shall take effect upon its passage and shall, except so far as declaratory of existing law, apply only to instruments thereafter becoming operative.

Explanatory Note.

This is intended to remove a remnant of a technical rule of feudal law, the danger and absurdity of which in modern times is shown in the Rev. Stat. Com'rs' Rep. 1835, c. 59, s. 7 (note), and a part of which was abolished by that section (now R.L., c. 134, s. 8). The rule is that a *remainder* fails if it does not vest on or before the termination of the particular estate (2 Bl. Com. 168, 169), the reason being that the *seisin* must be continuous without any interval between the two estates (Wms. Seisin, 198; Fearne Con. Rem. 4, 307). Accordingly, if land is devised to A for life and after his death to the eldest son of J. S. who attains 21, the remainder fails if the eldest son of J. S. is under 21 at A's death (*White* v. *Summers*, [1908] 2 Ch. 256). And, if the devise be to A for life and after his death to his children who attain 25, the children who have attained 25 at his death will take the whole to the exclusion of the others (*Symes* v. *Symes*, [1896] 1 Ch. 272, 277). But, if in these cases the devise had been to trustees *in trust* for the beneficiaries for like interests, the feudal rule would not have applied, because the *seisin* would have

been vested in the trustees and that seisin would have supported the remainders (*Abbiss* v. *Burney*, 17 Ch. D. 211, 229, 233). The result would have been that, in the former case, the eldest son of J. S. would have been entitled when he attained 21 after the death of A, and in the latter case, as the children who attained 25 would not necessarily have been ascertained within 21 years after a life in being, the gift to them would have been void for remoteness (*Hall* v. *Hall*, 123 Mass. 120, 124). This rule was abolished in 1836 by Rev. Sts., c. 59, s. 7, in cases where the preceding life estate is prematurely determined by surrender, merger, etc., but it is still in force where the life estate determines by the death of the life tenant. The rule was recently invoked in this State in *Simonds* v. *Simonds*, 199 Mass. 552, and was avoided only by construction of a confused and awkwardly expressed deed, and the undoubted intention of the parties was thereby given effect to, but this could not have been done if the gift over had been to the children attaining 25 instead of 21. An *executory devise* like a springing or shifting use does not depend on any previous estate and takes effect whenever it is ready to do so, subject to previous limitations if there are any (2 Bl. Com. 172–173), and a contingent remainder ought to be put on the same footing. In Williams on Seisin (p. 201) the author says that he cannot imagine a case more loudly calling for reform, and that the ancient rule does no good whatever, but a great deal of mischief.

The last clause in the bill is intended to prevent a doubt whether contingent remainders in this State are governed by the rule against perpetuities, which governs executory devises and other future limitations, viz., that, if such limitations may not vest within a life or lives in being and twenty-one years afterwards, they are void for remoteness and as tending to create perpetuities (*Brattle Square*

Church v. *Grant*, 3 Gray, 142; *Hall* v. *Hall*, 123 Mass. p. 124). It was decided in England in 1890 that contingent remainders are governed by a different and more ancient rule, namely, "that you cannot have a limitation for the life of an unborn person, with a limitation after his death to his unborn children" (which is what has been called "a possibility upon a possibility"), although it be within the limit allowed by the rule against perpetuities (*Whitby* v. *Mitchell*, 44 Ch. D. 85, 89), and this rule has lately been extended to contingent remainders of equitable estates (*In re Nash*, [1910] 1 Ch. 1). The correctness of these decisions has been disputed, and it is contended, with the support of great authorities, that contingent remainders like other future limitations are properly governed only by the rule against perpetuities (cf. 6 Law Q. Rev. 410 (1890); 35 Sol. J. 83 (Dec., 1890); 29 Law Q. Rev. 26, 304 (Jan. and July, 1913; Gray Perp. (2d ed.) ss. 290–298 *h*). This rule is bringing with it new troubles, as shown by *In re Park's Settlement*, [1914] 1 Ch. 505, in which, however, the decision was probably wrong, even under the rule (see comments on it in 27 Harv. Law Rev. 754 (June, 1914) and 30 Law Q. Rev. 134, 353 (April and July, 1914)). The distinction between contingent remainders and other contingent limitations is entirely technical, and it is obviously inconvenient that they should be subject to different rules respecting remoteness, or that contingent remainders should be governed by such an anomalous rule as that of *Whitby* v. *Mitchell*, or that it should be uncertain whether such a rule exists or not, thus entailing future litigation.

PART II.

PROPOSED AMENDMENTS TO THE CONSTITUTION PASSED FOR THE FIRST TIME BY THE LEGISLATURE.

These will come up again for consideration by the next legislature before being submitted to the people.

These amendments are as follows:

1. *Woman Suffrage.* That —

"Article three of the articles of amendment to the Constitution of the Commonwealth is hereby amended by striking out in the first line thereof the word 'male.'"

2. *Takings to Relieve Congestions and Provide Homes.* That —

"The general court shall have power to authorize the commonwealth to take land and to hold, improve, subdivide, build upon and sell the same, [A] *and to do any other lawful act in relation thereto*, for the purpose of relieving congestion of population and providing homes for citizens: *provided, however*, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof."

Agreed to by two-thirds vote of the House.

The foregoing article (having been amended by striking out, at [A], the words '*and to do any other lawful act in relation thereto*,') was agreed to by the Senate.

The House concurs in the Senate amendment by two-thirds vote.

[NOTE. As to this Subject see Nichols "Eminent Domain," Part VIII. and especially Chapter XLV.]

3. *Excess Takings for Parks, Wharves, etc.* That —

"Article X. of Part the First of the constitution of the commonwealth is hereby amended by adding thereto the following paragraph: — For the purpose of establishing parks, public reservations, wharves and docks the general court may by special acts authorize the taking by the commonwealth, or by a county, city or town, or by a commission authorized by a special act of the general court, of more land than is needed for the actual construction of such parks, reservations, wharves or docks, provided the land and property authorized so to be taken are specified in the act; and after so much of the land or property has been appropriated for such parks, reservations, wharves or docks as is needed therefor, the commonwealth, county, city, town or commission, as the case may be, may hold, lease, sell or use, with or without restrictions, the remainder thereof."

[As to this see reference to Nichols, *supra*.]

4. *Taxation of Personal Property.* That —

"[A] ARTICLE OF AMENDMENT.

Personal property subject to taxation shall be held to belong to one of the two following classes: — first, tangible property; second, intangible property, including stocks, credits, bonds, other evidences of indebtedness and such other kinds of personal property as are not included in the first class. Full power and authority are hereby given and granted to the general court to levy upon personal property taxes which shall be proportional upon property of the same class and may be at a uniform rate throughout the commonwealth."

Passed the Senate, June 15, 1914.

The foregoing article was amended by the House by striking out the whole of said article, at "A," and inserting in place thereof the following:

"ARTICLE OF AMENDMENT.

Full power and authority are hereby given and granted to the general court to impose and levy a tax on income in the manner hereinafter provided. Such tax may be at different rates upon income derived from different classes of property, but shall be levied at a uniform rate throughout the commonwealth upon incomes derived from the same class of property. The general court may tax income not derived from property at a lower rate than income derived from property, and may grant reasonable exemptions and abatements. Any class of property the income from which is taxed under the provisions of this article may be exempted from the imposition and levying of proportional and reasonable assessments, rates and taxes as at present authorized by the constitution. This article shall not be construed to limit the power of the general court to impose and levy reasonable duties and excises."

The article of amendment, as thus amended, passed the House by two-thirds vote and was accepted by the Senate.

[NOTE. Compare the Special Message of Governor Walsh, quoted in Part III. of this report, suggesting the possibilities under the existing provisions of the Constitution, and Chapters 761 and 770 of 1914.]

PART III.

REVIEW OF LEGISLATION OF 1914.

The Controversy over the Requirements for Admission to the Bar.

A serious controversy occurred this year in regard to the requirements for admission to the bar. The following three bills were introduced:

HOUSE 209.

"The only qualification required for admission to the bar in this commonwealth shall be that the applicant shall have a good moral character and that he shall pass the examination for the bar held by the bar examiners. The said examination shall relate solely to the applicant's knowledge of law and the statutes, and to his ability to express himself in writing."

HOUSE 377.

"No person who, on January thirty-first, nineteen hundred and fourteen, was eligible to apply for admission to the bar, under section two, chapter three hundred and fifty-five of the acts of the year nineteen hundred and four, shall be disqualified for admission by reason of his failure to produce a certificate or certificates that he is a graduate of a college, day high school, or school of equal grade, or that he has passed the entrance examination of a college, or of a college examining board, or the examination for admission to state normal schools."

HOUSE 1453.

That R.L. 165, Sect. 40 as amended by Sect. 1 of Chapter 355 of 1904 be further amended by striking out the first five lines and substituting the words:

"Said board shall examine applicants upon satisfactory proof of good moral character, for admission to the bar; on the general principles of the common law and of the more important provisions of our statutes; the examination in law to consist of questions to be based upon the following subjects or some portion thereof: contracts, torts, real property, criminal law, evidence, equity, corporations, partnership, mortgages, suretyship, agency, sales, negotiable instruments, bailments, carriers, wills, probate law, domestic relations, trusts, pleading, practice, constitutional law, bankruptcy, legal ethics.

Said board shall also determine the time and place of all such examinations and conduct the same."

These three bills were obviously all designed to accomplish the same purpose, viz., to prevent the Board of Bar Examiners requiring applicants for admission to the bar to have any general education.

Your committee, with the authority of the Executive Committee, opposed these bills and issued the following circular, which was sent to every member of the legislature and every member of this Association:

"DO THE PEOPLE OF MASSACHUSETTS WANT WELL-TRAINED LAWYERS?

Are most lawyers too well educated to suit you?

Massachusetts has always boasted of her standards in education.

Shall Massachusetts recede from her high standards?

Do you think that it ought to be made easier for insufficiently trained men to practise law?

Twenty other states require as much as we do. Some states require more. Other states are leading us.

Should Massachusetts go backward?

The Supreme Court of Massachusetts now has supervision of this matter and has approved reasonable rules as to requirements for admission to the bar.

But three bills (House Bills 209, 377, and 1453)

have been introduced into the legislature to break them down and take the matter out of the hands of the court.

The rule specially attacked requires the substantial equivalent of a high-school education.

If a man has not attended high school, he can study in some other way — the state is full of libraries, teachers, schools, etc.

Does any one think that the equivalent of a high-school education is beyond the reach of any man who ought to have the privilege of representing clients in court?

Is Massachusetts willing to admit this to be a fact?

We urge the defeat of House Bills 209, 377, and 1453, and of any other proposals to lower the standards necessary before a man can become a lawyer.

MASSACHUSETTS BAR ASSOCIATION."

(For a fuller discussion of this subject see the following):

"DISCUSSION OF THE PROPOSED LEGISLATION.

We believe that the jurisdiction and powers of the Supreme Court and the Bar Examiners in this matter should be left as they are. At present the Bar Examiners have power to make rules subject to the approval of the Supreme Court.

We believe that the Supreme Court can, and should be, trusted to exercise this jurisdiction fairly and reasonably and for the best interest of Massachusetts.

The present requirement approved by the Supreme Court is that an applicant should have a high-school education or its equivalent, in addition to passing an examination in law.

If an applicant has not been through a high school, the 'equivalent' means that he must have passed the examinations given by the State Board of Education for admission to the State Normal School in a certain number of subjects, the intention being to require a

limited amount of general education in addition to the ability to pass an examination on purely legal topics.

The controversy arises over this requirement as to the equivalent of a high-school education. Some men wish to reduce this to the equivalent of a grammar-school education, and some wish to do away with all requirements except the ability to pass an examination in purely legal subjects.

We appreciate fully the feeling of self-educated men of ability who have succeeded at the bar, and we have no desire or intention to disparage the value of such men to the profession and the community.

We appreciate also the feeling of some laymen that the state will be best served if men are allowed to practise law regardless of their general education, trusting to their own ability and initiative to educate themselves sufficiently after they are admitted to the bar. We wish to treat that feeling with all due respect.

But we do not believe that men who really have sufficient ability and determination to practise law and to be useful members of the bar will be kept out of the profession by the very limited requirement of the equivalent of a high-school education. The public and the state officials and the legislatures are constantly calling for more education and higher standards in order to improve citizenship. They are constantly criticising the legal profession. Bar associations and individuals all over the country are earnestly trying, in the face of difficulties, to improve standards of practice and to solve the problems. If, in spite of these things, the legislature holds the practice of the law as so trivial and unimportant a thing that it is not worth the effort and training required by the equivalent of a high-school education, what does all the talk about general education in the community amount to? What is it all for?

Let us respect men who have won their own education and success at the bar, but let us not forget that Americans generally are open minded enough to want

their children and their successors to be better and abler men in each succeeding generation, and that this can only be brought about by raising the standards in accordance with the increase in the facilities for education.

The reason for the requirement of higher standards for admission to the bar is that the study of modern law has become more complex as life has become more complex. The constantly increasing accumulation of statutes and decisions makes a general grasp of legal principles and a background of general education and training more and more important. If, in addition to these complications, there is crystallized in a statute the stultifying influence of an insufficiently trained bar the whole state will suffer, because the logical development of the law will suffer.

Do the people of Massachusetts really believe that able and vigorous self-educated men who wish to practise law would be seriously deterred by the necessity of passing the normal-school examination in half a dozen subjects? Does any one think that self-taught men like Abraham Lincoln, or Judge Miller, formerly of the United States Supreme Court (not to mention hundreds of others in the past or who are still in active service), would be prevented from practising law by such a requirement if they were surrounded with schools and libraries as men are to-day?

More than twenty states, including New York, Connecticut, Illinois, New Jersey, Pennsylvania, Rhode Island, Vermont, and Wisconsin, have requirements as to general education similar to those contained in the Massachusetts rule. In some states more is required. Other states are leading us in this respect.

All over the country the legal profession is being attacked on the ground that the profession is commercialized, and that lawyers are more interested in the game of technical tactics than they are in justice. Whatever ground there may be for such attacks, the only way to combat the commercial spirit is to try to develop a genuine professional spirit, which grows best

among men who are determined to improve themselves by study. This makes it important that men should be sifted into the profession by testing that determination to improve themselves before admitting them to the bar. This is a sound, practical reason for the requirement of some general educational test in addition to purely legal study and examinations and good moral character. If Massachusetts legislates against this practical policy and takes away the freedom of the court in helping to raise the standard of the profession, it will seriously obstruct the efforts of courts and of the bar to improve the very conditions of which the public and legislatures complain. Such action by Massachusetts would discourage the efforts of men all over the country who are trying to meet the criticisms directed against the bar by improving conditions.

At meetings of the American Bar Association during the past twenty-five years, the matter of general education and its importance has been repeatedly discussed, and from time to time resolutions have been passed by very large majorities in favor of requiring at least a high-school education for applicants for admission to the bar. These resolutions will be found in the Reports of the American Bar Association as follows:

1897, Vol. XX., pp. 34, 351.
1907, Vol. XXXI., pp. 522–525.
1909, Vol. XXXIV., pp. 753–757.

We have discussed the question merely as a question of policy and have explained the practical reasons for the present requirements. If there is any reasonable criticism of those requirements, we are satisfied that both the Bar Examiners and the Supreme Court are ready to hear and give full and fair consideration to them when the matter is properly brought before them.

Respectfully submitted,

MASSACHUSETTS BAR ASSOCIATION,

COMMITTEE ON LEGISLATION,

Frank W. Grinnell, *Secretary.*"

As there has been a great deal of misunderstanding about the attitude of the Bar Examiners and the Supreme Judicial Court in this matter it is important that the present requirements and their history should be explained in some detail.

The present rule, VII., A, of the Board of Bar Examiners approved by the Supreme Judicial Court, is as follows:

VII.

A.

General Education.

(Established March 28, 1911.)

After February 1, 1914, an applicant must show by certificate or certificates that he, —

(a) Is a graduate of a college, *or* has passed the entrance examinations of a college, *or* of the College Entrance Examination Board, *or* examinations substantially equivalent thereto; *or* has complied with the entrance requirements of a college; *or*

(b) Is a graduate of a day high school, or of a school of equal grade; *or*

(c) Has passed the examinations given for admission to the state normal schools of Massachusetts in the following subjects:

I. Language. — English with its grammar and literature.

II. United States History. — The history and civil governments of Massachusetts and the United States, with related geography and so much of English history as is directly contributory to a knowledge of United States History.

III. (a) Latin *or*
(b) French.

IV. (a) Algebra *or*
(b) Plane Geometry.

V. *Any two* of the following:
(a) Physiology and Hygiene.
(b) Physics.
(c) Chemistry.
(d) Botany.
(e) Physical Geography.

(The above rule, VII., A, was established by the Board of Bar Examiners March 18, 1911, and was approved by the Supreme Judicial Court March 28, 1911.)

It is important to notice that the rule does *not* require an applicant "to be a graduate of any high school" or of any other institution and the Bar Examiners have never made any such requirement.

HISTORY OF THE RULE.

Since 1876 (Acts 1876, c. 197) the matter of determining as to the acquirements and qualifications of applicants has been left with the Supreme Judicial and Superior Courts. Since 1876 examinations, either oral or written, have been required.

In 1897, as a result of recommendations made by the American Bar Association, the legislature (Acts 1897, c. 508) provided for a State Board of Bar Examiners to take the place of the county boards.

The Board of Bar Examiners was authorized to make rules subject to the approval of the Supreme Judicial Court.

The first rules which were made took effect February 1, 1898.

By Acts 1904, c. 355, the power of the Board of Bar Examiners to make rules subject to the approval of the Supreme Judicial Court was slightly increased, the language used being:

"Said Board may, subject to the approval of the Supreme Judicial Court, make rules with reference to examinations for admission to the bar and the qualifications of applicants therefor . . ."

August 1, 1904, a new rule was adopted which advised that applicants should have at least the equivalent of a high school education, but did not make the same obligatory.

Other States and Countries.

Meanwhile discussion was going on in the different states and at the meetings of the American Bar Association as to the amount of general education which ought to be required for admission to the bar (Reports of American Bar Association, Vol. XXI., 1907, pp. 522, 525).

Europe.

The United States Commissioner of Education compiled the requirements in European countries and reported:

> "Admission to the Bar in all continental countries of Europe is obtained through the universities which are professional schools for the four learned professions, — theology, medicine, law, and philosophy."

Other States.

As early as 1909, quite a number of states of the Union had made it necessary for applicants for admission to the bar to have substantially a high school education and it was a matter of comment that Massachusetts did not have this requirement.

Among the states then having this standard were the following:

Colorado.	New York.
Connecticut.	Ohio.
Illinois.	Oklahoma.
Iowa.	Pennsylvania.
Kansas.	Philippine Islands.
Minnesota.	Rhode Island.
New Jersey.	Vermont.
West Virginia.	Wisconsin.

Massachusetts.

Board of Bar Examiners.

In 1909 the Board of Bar Examiners, after consulting with bar examiners in other states and with a large number of members of the bar in Massachusetts, prepared a rule providing in substance that after August 1, 1911, applicants should be high school graduates, or else would pass an examination at one of the State Normal schools in subjects considerably less than those required for graduation from a high school.

Supreme Judicial Court.

This rule was submitted to the justices of the Supreme Judicial Court and after being duly considered was, in November, 1909, approved by all the justices of said court.

Legislature of 1911.

In January, 1911, two bills were introduced, viz.: House Bills 314 and 856, which were similar to the bills now pending.

The purpose of these bills of 1911 was to nullify the rule of the Board of Bar Examiners and prevent the board and the courts from requiring applicants to have any general education.

These bills were referred to the Judiciary Committee of 1911, the Hon. Wilmot R. Evans, Jr., being then chairman.

It was shown that there were a considerable number of men who had begun to study law previous to November, 1909, who would be prevented by the new rule from taking a bar examination.

Hearing.

The Board of Bar Examiners thereupon gave a hearing to all who were interested. The hearing was held in one of the court rooms at the Court House in Boston and was attended by about one hundred law students.

Postponement of Rule.

It was suggested by these students that the taking effect of the rule ought to be postponed until August 1, 1913, which would give the men who had begun to study law previous to November, 1909, an opportunity to take a bar examination.

The Board of Bar Examiners, recognizing the force of the argument above stated, thereupon decided to suspend the taking effect of said rule, not simply until August 1, 1913, but until six months later than that, viz., until February 1, 1914, which would give applicants who had begun to study law prior to November, 1909, at least two opportunities to take a bar examination.

The justices of the Supreme Judicial Court approved this action of the board and the rule was amended accordingly.

Judiciary Committee of 1911.

The members of the Judiciary Committee of 1911 being informed of the action of the Board of Bar Examiners and of the Supreme Judicial Court, reported adversely upon the said bills introduced in 1911 and no effort was made to have them enacted.

Subsequent History.

The rule as thus amended was at once printed and widely distributed, and a good many men at once began work in various ways which would enable them to comply with its requirements.

Rejected Applicants.

Many of the applicants who desire to have the rule as to general education nullified have already tried without

success to pass the bar examinations upon legal subjects. There may be as many as seventy such applicants.

1	applicant	has	tried	16	times.
1	"	"	"	13	"
3	applicants	have	"	12	"
1	applicant	has	"	9	"
1	"	"	"	8	"
5	applicants	have	"	7	"
5	"	"	"	6	"
2	"	"	"	5	"
5	"	"	"	4	"
13	"	"	"	3	"
37					

In Ohio applicants are not allowed to try more than five times. In Kansas an applicant cannot try more than once without special permission and the same is true in New Hampshire. In the Philippine Islands an applicant can only try three times. In Wisconsin an applicant who fails three times must have a special permit.

Examinations at State Normal Schools.

These are held twice a year, one in June and one in September. They are held in nine different places, viz., Bridgewater, Fitchburg, Framingham, Hyannis, Lowell, North Adams, Salem, Westfield, and Worcester.

Applicants may take a portion of the examination at one time and the remainder at a subsequent date.

The rule gives an applicant a choice of subjects in a number of instances.

Instruction can be obtained in a number of evening schools which will fit applicants to pass the examinations at the normal schools. The subjects are all embraced in the ordinary high school courses.

General Education — When to be Obtained.

In Pennsylvania and in several other states a student must satisfy the requirement as to general education before he begins to study law. Under the Massachusetts rule this is not required. A man is allowed to carry on his study of the law and his study of general subjects at the same time, although this is not considered a desirable thing to do.

A Square Deal.

It is the aim of the Board of Bar Examiners to treat all applicants in the same way and upon an equal footing. Examination books are read and marked by number, no member of the board knowing whose book he is reading.

Hardships.

The decisions of the board are made without regard to the hardships in any particular case. This seems to be the best and fairest way. The hardships are keenly appreciated by members of the board, but the interests of the community and the proper standing of the profession require that rules which are carefully made and are reasonable in their provisions should be followed and lived up to.

Legislation of 1914.

The facts above stated were laid before the legislature and none of the bills as originally presented were passed.

The legislature did, however, pass Chapter 670, which provides

> "that an applicant for admission to the bar shall not be required to be a graduate of any high school, college, or university."

This statute, however, is not directed against anything which the Bar Examiners have required, for, as already pointed out, the Bar Examiners have never made any such requirement. The present rule, VII., A, quoted and explained above, remains, therefore, unaffected, and as it is an obviously reasonable rule it is to be hoped that agitation about it will cease.

Chapter 699 of 1914 to allow the Settlement of Estates in One Year.

This bill was supported last year by this Association (Mass. Bar Assn. Rep., Vol. IV., pp. 90–91). The support was continued this year and the bill was passed. We believe it will prove to be of great convenience to the whole community.

The Anti-Injunction Act.

In view of the political importance which labor disputes have assumed this committee has been given no authority by the Executive Committee to take an active part before the legislature in the controversies relating to injunctions in such disputes. Accordingly these subjects have been left to be dealt with by others.

Following out this attitude we simply call the special attention of the bar to the new act, which deserves careful study.

CHAPTER 778.

"AN ACT TO MAKE LAWFUL CERTAIN AGREEMENTS BETWEEN EMPLOYEES AND LABORERS, AND TO LIMIT THE ISSUING OF INJUNCTIONS IN CERTAIN CASES.

SECTION 1. It shall not be unlawful for persons employed or seeking employment to enter into any arrangements, agreements or combinations with the

view of lessening the hours of labor or of increasing their wages or bettering their condition; and no restraining order or injunction shall be granted by any court of the commonwealth or by any judge thereof in any case between an employer and employees, or between employers and employees, or between persons employed and persons seeking employment, or involving or growing out of a dispute concerning terms or conditions of employment, or any act or acts done in pursuance thereof, unless such order or injunction be necessary to prevent irreparable injury to property or to a property right of the party making the application, for which there is no adequate remedy at law; and such property or property right shall be particularly described in the application, which shall be sworn to by the applicant or by his agent or attorney.

SECTION 2. In construing this act, the right to enter into the relation of employer and employee, to change that relation, and to assume and create a new relation for employer and employee, and to perform and carry on business in such relation with any person in any place, or to do work and labor as an employee, shall be held and construed to be a personal and not a property right. In all cases involving the violation of the contract of employment either by the employee or employer where no irreparable damage is about to be committed upon the property or property right of either, no injunction shall be granted, but the parties shall be left to their remedy at law.

SECTION 3. No persons who are employed or seeking employment or other labor shall be indicted, prosecuted or tried in any court of the commonwealth for entering into any arrangement, agreement, or combination between themselves as such employees or laborers, made with a view of lessening the number of hours of labor or increasing their wages or bettering their condition, or for any act done in pursuance thereof, unless such act is in itself unlawful. [*Approved July 7, 1914.*"

Auditors in Civil Actions.

A number of bills were introduced to provide various strict rules relative to auditors' reports and the practice before auditors. All but one of these bills were opposed by your committee on the ground that the remedy proposed would not improve matters but would tend to introduce new and inconvenient formal complications into the law.

The following act, however, was passed as

CHAPTER 576.

SECTION 1. No action at law shall be discontinued, nor shall the plaintiff in any such action become nonsuit after the action shall have been referred to an auditor and hearings before such auditor have been begun, except with the written consent of the defendant or in the discretion of the court.

This section was not opposed by your committee. It changes the long established rule discussed in *Carpenter & Sons* v. *New York, etc., R.R.*, 184 Mass. 98, and places an auditor's hearing on the same basis as a master's hearing in equity as to the absolute right of a plaintiff to discontinue.

SECTION 2 amends R.L. 165, Sect. 55, by striking out all after the word "court" in the sixth line and substituting the following:

"The auditor's findings of fact shall be prima facie evidence upon such matters only as are embraced in the order; but the court at the trial shall exclude any finding of fact which appears in the report to be based upon an erroneous opinion of law, or upon evidence which is inadmissible. Whenever the auditor makes a ruling as to the admissibility of evidence and objection is taken thereto he shall, if requested so to do, make a statement of such ruling in his report. The auditor shall not make any finding of fact which depends upon

the decision of a question of law, unless he makes alternative findings or states in his report the view of the law upon which his finding depends, together with such subsidiary facts as will enable the court to pass upon the question."

This section will soon be tested in practice.

SECTION 3, R.L. 165, Sect. 57, is amended by adding:

"If either party neglects to appear at the time appointed for such hearing, or at any adjournment thereof, without just cause, or if at any such hearing either party refuses to produce in good faith the testimony relied on by him, the auditor or auditors may close the hearings and make a report recommending that judgment be entered for the adverse party. Judgment shall be entered accordingly at the first judgment day after the expiration of ten days from the filing of the report, unless the court, for good cause shown, otherwise orders."

SECTION 4, R.L. 165, Sect. 59, is amended by striking out the last sentence.

SECTION 5, R.L. 165, Sect. 61, is amended by striking out the word "further" in the 4th line.

Other Acts Relating to Civil Practice and Procedure.

C. 553. Changing the burden of proving contributory negligence:

"SECTION 1. In all actions, civil or criminal, to recover damages for injuries to the person or property or for causing the death of a person, the person injured or killed shall be presumed to have been in the exercise of due care, and contributory negligence on his or her part shall be an affirmative defence to be set up in the answer of, and proved by the defendant.

SECT. 2. All acts and parts of acts inconsistent herewith are hereby repealed.

SECT. 3. This act shall take effect upon its passage, but shall apply only to actions or causes of action hereafter accruing."

C. 406. As to admission in evidence record of conviction of witness. R.L., Chap. 175, Sect. 21, as amended by Chapter 81 of 1913 is further amended by striking out said section and substituting:

"SECTION 21. The conviction of a witness of a crime may be shown to affect his credibility; but the conviction of a witness of a misdemeanor, after the lapse of five years from the date of such conviction, and the conviction of a witness of a felony, after the lapse of fifteen years from the date of the expiration of his term of imprisonment therefor, shall not be shown to affect his credibility unless there has been a subsequent conviction of the witness within the above mentioned periods."

C. 33. To allow public authorities to petition for assessment of damages when they have taken or injured property.

C. 35. Extending the provisions of the simplified procedure act of 1913, Chapter 716, to the Municipal Court of the City of Boston and providing certain other changes in the procedure of that court, and see also Chapter 409 amending the above.

C. 54. That alias executions shall be in effect for five years from their dates unless satisfied and shall be returned to court within ten days after satisfaction.

C. 146. Relative to summary process for the possession of land.

C. 318. That a levy by setoff or sale of land in different counties may be made by an officer of any of such counties.

C. 473. Giving to the justices of the Superior Court jurisdiction concurrent with probate and police, district and municipal court judges, to commit insane persons.

C. 626. Relative to service of process on foreign insurance companies.

C. 673. Relative to the appointment of interpreters for the Superior Court.

C. 429. Relative to arrest and examination on civil process. R.L. 168, Sect. 20, as amended by Section 1 of Chapter 203 of 1906 is further amended by inserting a proviso:

> "that no order for arrest shall issue until the expiration of twenty-four hours after any time set for examination, and within said period the magistrate shall have power to proceed with the examination upon motion and proof that the failure of the debtor or creditor to appear at such time was not due to his own fault."

C. 371. That masters in chancery shall promptly file bonds approved to dissolve attachments in Boston Municipal Court, and such bonds may be used by defendant for removal to Superior Court under Chapter 649 of 1912 and in lieu of the bond specified in Section 3 thereof.

[NOTE. We are not clear why this act was passed as the law was clear under R.L., Chap. 167, Sect. 119, and Sect. 6 of Chap. 649 of 1912. Under those statutes the defendant was the man to file the bond and the attachment was not dissolved until it was filed, accordingly it was for the defendant's interest to see that it was filed. Now apparently the bond is to be filed by the master in chancery. This will make life more inconvenient both for the master and for the defendant, who will have to see that he files it, and apparently does no one any good, for it is immaterial to the plaintiff who files it.]

C. 385. That the compensation of a guardian ad litem of an insane libellee in a divorce case shall be determined by the Court and paid by the libellant if the Court so orders.

C. 465. Relative to continuances of cases in police district and municipal courts.

Criminal Practice and Procedure.

C. 661. Relative to false reports or statements concerning corporations:

"SECTION 1. Whoever knowingly makes, executes, files or publishes any report or statement required by law to be made, executed, filed or published by a corporation in this commonwealth, whether such corporation is organized under the laws of this commonwealth or elsewhere, or whoever causes the same to be done, which report or statement is false in any material representation, shall be punished by imprisonment for not more than three years, or by a fine of not more five thousand dollars, or by both such fine and imprisonment.

SECT. 2. Whoever knowingly makes, executes or publishes any report or statement required by the law of another state or country to be made, executed, or published by a corporation or whoever causes the same to be done, within this commonwealth, which report or statement is false in any material representation, shall be punished by imprisonment for not more than three years, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment."

C. 728. That the attorney-general may expend "such sums as shall be approved by the governor and council" in carrying out the provisions of Chapter 709 of 1913, instead of the maximum of $5,000 allowed by the original act.

C. 654. To allow arrest without a warrant in the day time as well as at night under R.L. 212, Sect. 47.

C. 635. To determine the institutions to which women convicted of felonies may be committed.

C. 520. That bail forfeited in non-support cases may be applied to the support of the wife and minor children.

C. 521. Relative to rewards for the detention, arrest, and convictions of persons who have committed a felony.

C. 387. That complaints and prosecutions concerning false weights and measures may be begun in the court having jurisdiction over the place to which the goods are shipped.

C. 390. To authorize clerks of the Superior Court to admit prisoners to bail.

C. 310. R.L. 220 is amended by striking out Section 31 and substituting:

> "SECTION 31. When a person is committed to the state prison, the Massachusetts reformatory, the reformatory for women or to any other public penal institution, on conviction of felony, the clerk of the court shall, without charge, transmit with the mittimus an attested copy of the complaint or indictment under which such person was convicted, and the names and addresses of the witnesses who testified for and against such person at the trial, together with a record containing the names and addresses of the presiding judge, district attorney and of the attorney for the defendant."

Probate Law, Real Estate, and Conveyancing.

C. 699. To allow settlement of estates in one year.

Resolves, C. 100. That the tax commissioner, attorney-general, and chairman of the Homestead Commission shall be a special commission to report bills next January for uniform methods and procedure for taking land for public purposes. Public hearings are to be held.

Resolves, C. 121. For a special commission to recommend changes in the laws relating to liens for labor and materials, construction and other mortgages, tax titles and procedure relative to tax sales, deeds, and takings.

[NOTE. The commissioners appointed are Hon. Charles T. Davis of the Land Court, Francis M. Phelan and Samuel M. Child.]

C. 108. To give the Probate Court jurisdiction to authorize the mortgage of land "subject to a *vested* remainder or reversion" on petition of any person having an estate in possession or in remainder or reversion and after notice, etc., as prescribed.

C. 436. To amend R.L., Chap. 178, Sect. 53, by expressly confining the right to take on execution land of deceased persons to land "which has not been sold and conveyed by deed duly recorded by the executor or administrator with the will annexed of such deceased person under a license from the Probate Court or under a power of sale contained in the will of the deceased."

[NOTE. This statute removes an inconvenient uncertainty which has existed at the bar because of differences of opinion as to whether a sale under a power by an executor or an administrator c.t.a. carried a title free of debts. This act makes it clear that it does, putting a sale under a power expressly on the same footing as a sale under license from the probate court.]

C. 198. To establish April 1 as the date for assessment of taxes and for other purposes.

[NOTE. This was the act passed to avoid the doubt as to whether the tax day had been inadvertently repealed by Chapter 835 of 1913.]

C. 569. To confirm Street Commissioners' Takings in Boston.

SECTION 1. All takings of land for any municipal purpose by the board of street commissioners of the city of Boston in the name of the city recorded in the registry of deeds for the county of Suffolk subsequent to the eleventh day of June in the year nineteen hundred and nine are hereby authorized, ratified and confirmed.

SECT. 2. The time within which any person may file a petition in the office of the clerk of the superior court for the county of Suffolk for a jury to determine

the damages arising from any taking of land by the board of street commissioners, as set forth in section one of this act, is hereby extended for two years from the date of its passage.

SECT. 3. This act shall take effect upon its passage. [*Approved May 22, 1914.*]

C. 563.

AN ACT RELATIVE TO THE TAXATION OF LEGACIES AND SUCCESSIONS.

SECTION 1. Section twenty-five of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, codified as section twenty-five of Part IV. of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, is hereby amended by inserting after the word "made," in the fifth line the words: — or intended to take effect in possession or enjoyment after the death of the grantor when such death occurred, — so as to read as follows: — *Section 25.* This part shall not apply to estates of persons deceased prior to the date when chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven took effect, nor to property passing by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor when such death occurred prior to said date; but said estates and property shall remain subject to the provisions of law in force prior to the passage of said chapter.

SECT. 2. This act shall take effect upon its passage. [*Approved May 22, 1914.*]

C. 462.

AN ACT RELATIVE TO THE POWERS OF THE TAX COMMISSIONER IN THE ASSESSMENT OF LEGACY AND SUCCESSION TAXES.

For the purpose of assessing taxes imposed by the provisions of chapter five hundred and sixty-three of the

acts of the year nineteen hundred and seven and all acts in amendment thereof and in addition thereto, the tax commissioner may summon and examine on oath any person supposed to know or have means of knowing any material fact touching the subject of such assessment. The said examination may be reduced to writing, and false swearing therein shall be deemed perjury and be punishable as such. Any justice of the superior court, upon application of the tax commissioner, may compel the attendance of such witnesses and the giving of such testimony before the tax commissioner in the same manner and to the same extent as before said court.

C. 596. Relative to reclamation of wet lands.

C. 598. To provide for the classification and taxation of wild or forest land under the recent constitutional amendment.

C. 625. Extending the time allowed the tax collector to sell for unpaid taxes from one year to two years from the first of October in the year of assessment. Chapter 688 of 1913 had specified one year.

C. 477. Relative to the sale of real estate within the state by non-resident married women.

C. 471. That amendments of instruments creating voluntary associations shall be filed with the commissioner of corporations and town clerk within thirty days.

C. 450. Relative to the apportionment of sidewalk and curbstone assessments.

C. 356. That the widow of a deceased person if competent and willing shall be appointed administratrix in preference to the next of kin unless it is necessary or proper to appoint some other person. See also Chapter 702 for amendment.

Taxation of Personal Property.

C. 770. To provide for a stamp tax of two cents for each $100 of face value or fraction thereof on transfers of stock of corporations or voluntary associations after December 1, 1914.

C. 761. To exempt from taxation bonds secured by mortgage on tangible property within or without the Commonwealth which is there actually taxed and to provide for the annual registration of such bonds by the tax commissioner on payment of a fee of 30 cents for each $100 of par value.

These two acts were passed after the following special message from the Governor (H. 2512):

> "EXECUTIVE DEPARTMENT, BOSTON, April 22, 1914
> *To the Honorable Senate and House of Representatives.*
>
> I have already called to your attention the very unsatisfactory condition of our tax laws, and have urged upon you the necessity of either changing those laws, or providing for their stricter enforcement. Our tax laws are at present disproportionate, unjust and ineffective.
>
> It has been generally assumed that the powers of the General Court under the present constitution are so limited that our system of taxation cannot be materially changed without an amendment to our State Constitution. If so, the community must submit to a delay of three years at least before any satisfactory remedy for our serious problems can be enacted into law. Many persons who have given this subject careful study believe that there is reason to question the validity of this assumption, and that the powers conferred upon the General Court by the organic law are considerably wider than has commonly been supposed.
>
> This view as to your powers is confirmed, in part by the language used by the Supreme Judicial Court, in response to the inquiry addressed to the Court by your

honorable body with reference to the constitutionality of the so-called three mill tax, 195 Mass. 607. In that opinion the Court stated that in giving their decision the constitutionality of that proposed intangible property referred to in the question which you then propounded to the Court could be altogether exempted from taxation to avoid double taxation or for other justifiable reasons, and that they did not intimate that this could not be done. In part also from the fact that the constitutionality of several such duties or excises seems to be strongly indicated by the opinion of the Court delivered in response to your inquiry as to the validity of a transfer tax on certificates of stock, etc., 196 Mass. 603. If this is so, the Legislature already possesses wholly adequate powers to remedy the present injustice and inequality, and to avert the injury to our prosperity which seems impending."

His Excellency then suggested that the following questions be submitted to the Supreme Court before legislation was formulated:

I.

"Can the General Court exempt from the general property tax the following described property: —

(*a*) Stock of foreign corporations, the property, capital stock or franchises of which are subject to taxation where situated, or where the corporation is organized, or the properties of which are situated within foreign jurisdictions, or the franchises of which are taxed in this State in proportion to the business done here;

(*b*) Stock of foreign corporations with respect to which a valid excise, duty, or stamp tax has been levied by this Commonwealth;

(*c*) Bonds and notes secured by property which is subject to taxation where situated, or by property which is located within a foreign jurisdiction or the value of which is based upon such property;

(*d*) Bonds and notes with respect to which a valid excise, duty, or stamp tax has been levied by this Commonwealth?

II.

Can the General Court impose an excise upon the issue by corporations holding charters from this Commonwealth or bonds or notes, or upon the annual or periodic registration by an agent of the Commonwealth of such bonds or notes?

III.

Can the General Court grant to the owners or holders (*a*) of such stock or (*b*) of such bonds and notes as are referred to in the first question, the privilege of registering them with an agent of the Commonwealth, and of establishing the right to and securing an exemption of such stock, bonds, or notes from the general property tax, by filing with such agent satisfactory evidence of the existence or continuance of the conditions referred to in such question, and can it impose an excise upon such privilege either in the form of a single payment or of a periodic charge?

IV.

Can the General Court impose a duty or an excise on the income derived during any given period from the following classes of property, respectively: — (*a*) all personal property, (*b*) all intangible personal property, (*c*) bonds, notes and other debts, or (*d*) stock of corporations?

V.

Can the General Court impose a duty or an excise on the use of transferable paper writings as symbols or evidences (*a*) of ownership of shares of foreign corporations or of associations or (*b*) of the indebtedness of corporations, associations, or individuals?

VI.

Can the General Court impose a stamp duty or tax upon transferable paper writings such as stock certificates or bonds or notes, payable at the time of the issue thereof or periodically; and can it deny to the owners of such writings recognition of the nature and effect of such writings as property or as evidences of ownership, or the right to transfer or pledge the same or the property represented thereby unless bearing the required stamp?"

These questions were accordingly submitted to the Supreme Court by the legislature, but the Supreme Court unanimously decided that the constitution did not authorize them to give advisory opinions on abstract questions of constitutional law before any specific legislation was formulated for their examination. See Opinion of the Justices, 217 Mass. 607 at pp. 610–613.

In connection with these questions a carefully prepared printed brief of fifty-two pages was filed with the Joint Committee on Taxation by Messrs. Philip Nichols, Bentley W. Warren, Roland Gray, and Clement R. Lamson showing the reasons for the affirmative on the various questions. Copies of this brief are in the various county Law Libraries.

Thereafter the two acts above mentioned were passed.

Meanwhile the proposed taxation amendment to the constitution, already referred to in Part II. of this report, passed its first stage. This amendment will come up again next year.

Workmens' Compensation.

C. 708. This is an act of seventeen sections amending the compensation law in various ways.

Among other changes are:

A new definition of "employee" by striking out the previous exception of "one whose employment is but casual."

A different provision for medical attendance.

An increase in the rate of payments.

An addition to the class of persons "conclusively presumed to be wholly dependent for support upon a deceased employee."

Uniform Legislation.

C. 381. To establish the board of commissioners for the promotion of uniformity of legislation in the United States.

His Excellency, the Governor, has appointed Hollis R. Bailey, Hon. Joseph F. O'Connell, and Prof. Samuel Williston as members of the board.

Miscellaneous.

C. 432. Amending R.L. 165, Sect. 45, relating to disbarred persons, by adding to the acts therein penalized the words —

> "or holds himself out or represents or advertises himself as having authority or power in behalf of persons who have claims for damages to procure settlements of such claims for damages either to person or property, or whoever, not being an attorney at law, solicits or procures from any such person or his representative, either for himself or another, the management or control of any such claim, or authority to adjust or bring suit to recover for the same."

C. 121. Relative to notices of intention of marriage.

C. 126. Restricting the right of action for false imprisonment or false arrest.

C. 145. To incorporate the Suffolk Law School with power to grant the degree of Bachelor of Laws.

C. 411. To provide for the appointment of twelve masters in chancery in Suffolk County instead of eleven.

C. 347.

AN ACT TO REGULATE THE PROCURING OF PERSONS TO TAKE THE PLACES OF EMPLOYEES DURING STRIKES, LOCKOUTS OR OTHER LABOR DISPUTES.

SECTION 1. If an employer, during the continuance of a strike among his employees, or during the continuance of a lockout or other labor trouble among his employees, publicly advertises in newspapers, or by posters or otherwise, for employees, or by himself or his agents solicits persons to work for him to fill the places of strikers, he shall plainly and explicitly mention in such advertisements or oral or written solicitations that a strike, lockout or other labor disturbance exists among his employees.

SECT. 2. No employer, during the continuance of a strike, lockout or other labor trouble among his employees, shall directly or indirectly procure or attempt to procure persons to fill the places of employees involved in such strike, lockout or other labor trouble, if such persons are or have been solicited by means of advertisements or oral or written statements in which it has not been plainly and explictly mentioned that a strike, lockout or other labor trouble exists in the establishment where such persons are to be employed. This provision shall apply whether such advertisements or oral or written solicitations were made within or without the commonwealth.

SECT. 3. No person, firm, association or corporation, during the continuance of a strike, lockout or other labor trouble among the employees of another person, firm, association or corporation, shall procure, or attempt to procure, or assist in any way in procuring, or attempting to procure persons to work for such other person, firm, association, or corporation, to fill the places of employees involved in such strike, lockout or other labor trouble, if such persons are or have been solicited by advertisements or oral or written statements, whether made within or without the commonwealth, in which it has not been plainly and

explicitly mentioned that a strike, lockout or other labor trouble exists in the establishment where such persons are to be employed.

SECT. 4. Any person, firm, association or corporation violating any provision of this act shall be punished by a fine not exceeding one hundred dollars for each offence.

SECT. 5. The provisions of this act shall cease to be operative when the state board of conciliation and arbitration shall determine that the business of the employer, in respect to which the strike or other labor trouble occurred, is being carried on in the normal and usual manner and to the normal and usual extent. Said board shall determine this question as soon as may be, upon the application of the employer.

SECT. 6. Chapter four hundred and forty-five of the acts of the year nineteen hundred and ten and chapter five hundred and forty-five of the acts of the year nineteen hundred and twelve are hereby repealed as to all offences committed after this act takes effect. [*Approved April 13, 1914.*]

C. 532. To enlarge the jurisdiction and change the name of the police court of Lawrence. The name of the court is now the district court of Lawrence; and Andover, North Andover and Methuen are added to the district.

C. 449. That after this year the general laws shall be printed in one volume and numbered consecutively and the special acts and the resolves in a separate volume.

Order for joint recess committee:

"To investigate the subject of charters and laws for governing cities and providing a standard form of charter for the government of cities both by commission and otherwise and any other matters which the committee may deem pertinent in regard to the subject of city laws and charters."

This committee is now at work.

PART IV.

CONSTITUTIONAL PROPOSALS WHICH WERE NOT ADOPTED.

S. 1, p. 5, and H. 1416. That a constitutional convention be called.

S. 1, pp. 19–20; H. 182 and 1109. For biennial elections.

H. 183. To give cities and towns greater power in local affairs as follows:

> "Each city or town shall have the power to establish, alter, amend, and make additions to its charter by majority vote of its citizens, on proposals offered in writing by twelve per cent. of its voters; shall have power to exempt classes of property from taxation and when authorized by the general court to acquire land for homes for its citizens, and to hold, improve, subdivide, sell, lease, rent, or build upon same, or do any lawful act intended ultimately to promote the general welfare notwithstanding that the primary effect of such act may benefit individuals; may unite with any contiguous city or town when such union is approved by majority vote of the voters of each: *provided*, that nothing shall be done, and no charter shall contain any provision, contrary to the general laws of the commonwealth."

(*See also H. 1751.*)

[NOTE. The whole subject of city charters is being considered by a recess committee of the legislature.]

H. 184 and 1107. That —

> "The general court may give to cities and towns authority to purchase and to sell to their inhabitants the

necessaries of life, and to pay for the same out of the assessments, rates, taxes, excises or duties imposed and collected for the public service."

(*See also H. 1418 and H. 1419.*)

H. 185. That all judges be elected for a term of years not to exceed five.

Opposed.

H. 186 and 1106. For the recall of judicial decisions.

Opposed.

H. 598. For the recall of state and county officials including judges.

Opposed.

H. 1108. Relative to the method of laying out representative districts and the apportionment of representatives.

H. 1105. That —

"Article ten of Part I. of the constitution of the commonwealth is hereby amended by adding thereto the following paragraph: — The legislature may take or authorize public bodies to take land by right of eminent domain on payment of just compensation therefor and hold, lease, use or sell the same at such times and for such purposes as it believes to be for the common good."

[NOTE. As to the constitutionality of this sort of thing under the federal constitution, see Nichols "Eminent Domain," Part VIII., referred to in last year's report (Mass. Bar Assoc. Rep., Vol. IV., p. 118). Cf. the two amendments which were passed, quoted above in Part II. of this report.]

H. 1267. To prohibit sectarian legislation and the support of sectarian institutions from public funds.

S. 1, p. 6, H. 1268 and 1579. To abolish the executive council.

H. 1420. Relative to the selection of militia officers.

H. 1753. To change the representation in the House of Representatives, to provide for the Recall of the Members thereof, and to abolish the Senate.

H. 1925. To allow aliens who have declared their intention of becoming citizens to vote after one year's residence.

S. 236. That —

> "The legislative authority of the commonwealth is hereby given power to regulate or prohibit either upon public or private property the public display of posters or signs or of any commercial advertising device."

H. 1703 (on petition of the Massachusetts Single Tax League). That —

> "The general court shall provide for the gradual exemption from taxation by the state, and by any county, city or town therein, of all personal property and of all buildings and other improvements on, in or to land. On and after the first day of January in the year nineteen hundred and twenty-six, all personal property and all buildings and other improvements on, in or to land shall be totally exempt throughout the commonwealth from any and all taxation for state, county and city or town purposes.
>
> All provisions of the existing constitution inconsistent with the provisions herein contained are hereby annulled."

There were also a number of other proposed taxation amendments.

The Compulsory Initiative and Referendum.

S. 1, pp. 6, 19; S. 106; H. 181 and 599. Several plans for the compulsory initiative and referendum.

In view of the political nature of the controversy over this proposal to amend the constitution, the committees of

this Association have refrained from taking any part in the discussion on behalf of the Association.

But as the proposal would involve a change in the machinery which is at the bottom of all the law in Massachusetts your committee reports the situation for the information of the bar.

This year the Committee on Constitutional Amendments reported in favor of the plan with three dissents (H. 2557 and 2739). But it failed to get the support of the necessary two-thirds vote in the house (House Journal, pp. 2119–2123, June 25, 1914).

Accordingly, supporters of the measure appear to be resorting to the Public Opinion Act of 1913 as appears from the following newspaper item:

> "For the first time in the history of Massachusetts an attempt is being made to have a question of public policy placed on the official primary ballot. No petitions were filed last year, the first under which the privilege was granted the voter by the Public Opinion Act. This year a concerted effort is being made to have the following question on the ballot:
>
> 'Shall the representative from this district be instructed to support the initiative and referendum so as to give the power to accept or reject, at the polls, measures that shall be proposed by the Legislature?'
>
> Petitions thus far filed are from the following districts: 10th and 12th Norfolk; 1st and 2d Hampden; 4th, 5th, 25th and 26th Middlesex; 2d and 11th Worcester; 7th Berkshire; 3d Franklin; 3d Hampshire; 24th Essex, and 8th Bristol."

This Public Opinion Act was mentioned in last year's report (Mass. Bar Assoc. Report, IV., p. 116), but, as most people are not familiar with it, we print it in full (Chapter 819 of 1913):

"AN ACT TO PROVIDE FOR SUBMITTING TO THE VOTERS ON OFFICIAL BALLOTS QUESTIONS OF PUBLIC POLICY.

SECTION 1. On an application signed by twelve hundred voters in any senatorial district, or by two hundred voters in any representative district, asking for the submission to the voters of that senatorial or representative district of any question of instructions to the senator or representatives from that district, and stating the substance thereof, the secretary of the commonwealth shall determine if such question is one of public policy, and if he shall so determine shall draft it in such simple, unequivocal and adequate form as he shall deem best suited for presentation upon the ballot. Upon the fulfilment of the requirements of this act the secretary shall place such question on the official ballot to be used in that senatorial or representative district at the next state election.

SECTION 2. Signers of applications shall append to their signatures their residence, with street and number, if any, and shall be certified as registered voters by the proper registrars of voters, and in Boston by the election commissioners. All provisions of law relating to nomination papers shall, as far as they may be applicable, apply to such applications.

SECTION 3. Applications shall be filed with the secretary of the commonwealth not less than sixty days before the election at which the questions are to be submitted. Not more than two questions under this act shall be placed upon the ballot at one election, and they shall be submitted in the order in which the applications are filed. No question negatived and no question substantially the same shall be submitted again in less than three years.

SECTION 4. No vote under the provisions of this act shall be regarded as an instruction under article nineteen of the bill of rights of the constitution of the commonwealth unless the question submitted receives a majority of all the votes cast at that election.

SECTION 5. This act shall take effect upon its passage."

In connection with this whole subject it should be remembered that the discretionary referendum was allowed by the forty-second amendment to the constitution adopted last November.

PART V.

REVIEW OF SOME PROPOSED LEGISLATION WHICH WAS NOT ADOPTED.

The Proposed Massachusetts Retirement Act as applied to Judges.

H. 2450 is a full report of the special commission on pensions appointed under Resolves, Chapter 106 of 1913, consisting of James E. McConnell, Chairman, Magnus W. Alexander, Secretary, Henry S. Dennison.

This report discusses the general pension problem in detail, especially as bearing on the public service, and contains a large amount of statistical information. The commission drafted and recommended a proposed "Massachusetts Retirement Act" for public employees, which is in substance a form of compulsory savings or retirement insurance act under which 5% of the salary of all public employees would be deducted for the first 25 years of service and put at interest, with an equal amount contributed by the public employer, to form a retirement fund "provided that any employee who receives more than two thousand dollars annually in salary, pay or compensation shall not be assessed for contributions on the excess above that amount and further provided that no such deductions shall be made in the case of employees who begin service when they have reached an age which is within ten years of the retirement age" (see Report, p. 192).

The Report states that:

> "The Commission drafted (this act) with the intent of applying it to practically all public servants; it is convinced that one of the foundation stones on which to build this law must be equality in the treatment of all public employees."

Accordingly the commission "advocates including all judges except those of the Supreme Judicial Court in the present proposed act but without compulsory retirement, in order to establish equality of treatment of all public servants by the law as far as this can be done" (see Report, pp. 14–15).

It is further said on pages 13 and 14:

> "Exceptions to the complete inclusiveness of the law had, nevertheless, to be made. Since, under the constitution of Massachusetts, it is doubtful whether deduction can be made from the salaries of the justices of the Supreme Judicial Court, it became advisable to exclude the highest judiciary of the State from the provisions of the act.* Were it not for this constitutional limitation the commission would have included

* In confirmation of the position of the commission relative to the salaries of the justices of the Supreme Judicial Court under the constitution, the following passage is interesting, from the article in 21 Law Reporter at pp. 71–72:

> "After declaring, in the article of the Declaration of Rights, . . . that 'it is not only the best policy, but for the security of the rights of the people, and of every citizen,' that these judges 'should have honorable salaries ascertained and established by standing laws,' it repeats the same principle in the Frame of Government in these words: 'Permanent and honorable salaries shall also be established by law for the justices of the Supreme Judicial Court;' Chap. 1, Sect. 1, Art. 13. The preamble of the statute of February 12th, 1781, . . . stating that 'the Constitution of this Commonwealth provides that an establishment should be made for an honorable stated salary of a fixed and permanent value for the justices of the Supreme Judicial Court,' shows that the first legislature of Massachusetts understood that the amount of the salary must be beyond the power of reduction. . . . But it is a satisfaction . . . to know that the highest judicial authority has been expressed in a form which forbids any insinuation of unworthy motive, or influence, in favor of the sufficiency of this provision. For it is well known that the present Chief Justice of the Commonwealth (Shaw, C.J.) refused to receive any salary whatever from the State Treasury, after the act of 1843 (chapter 9) undertook to reduce these salaries, until the legislature of the succeeding year (by St. 1844, Chap. 24), restored the salaries to their former standard, and made compensation for the reduction. It is also worthy of remark that the Convention, held in 1853 to revise the Constitution of Massachusetts, adopted without a division, the following amendment, introduced with the avowed intention to make the provision 'so explicit that it would not be misunderstood . . . the justices of the Supreme Judicial Court shall receive honorable salaries, which shall not be diminished during their continuance in office.' 2 Debates in Convention of 1853, 697."

See also letter of Chief Justice Parsons to Governor Strong in 1806, Memoir of Parsons, pp. 228–229.

these justices within the provisions of the proposed act; all other judges are included. In taking this stand the commission is not unmindful of the unique position which the justices of the highest court of Massachusetts occupy in the public service. As the court of last appeal and the final interpreters of the constitution they are the guardians of the constitutional rights and liberties of every citizen of the Commonwealth. An error of judgment on the part of the justice of the Supreme Judicial Court may prove of more fundamental consequence than a mistake in thought or action of any other public servant. No condition should therefore be imposed on this service which might operate against the voluntary retirement of any member of the highest judiciary at a time when his mind may begin to lose its keenness of perception and clarity of thought, or his physical condition may prevent him from a complete fulfilment of the functions of his high office.

It is for this reason that the commission proposes to retain the present law under which justices of the Supreme Judicial Court are permitted to retire. An amendment to this law is necessary, however, in order to eliminate the justices of the Superior Court from its provisions. A draft of the amended law is presented in Chapter VI. of the report. But even if justices of the Supreme Judicial Court could be brought within the proposed retirement act, they, as well as all other judges of the Commonwealth, would have to be exempted from the compulsory retirement provision, since under the constitution of Massachusetts all judges are appointed during good behavior."

The draft amending act referred to in the above passage is printed on page 204 of the Report.

The reason for the provision above quoted from the proposed act that the deductions shall not be made on the excess of salary above $2,000 when the salary exceeds that amount is explained by the commission as follows:

"In order, however, not to increase unnecessarily the financial burden of the public employer, and also because legislation of this kind should concern itself primarily with persons of moderate or small incomes, to the end that there should be provision in old age for the necessities of life, the proposed law does not recognize the excess of any salaries or wages above $2,000 per year."

The effect of the proposed legislation would be to substitute its provisions for the present retirement pensions (under R.L., Chap. 158, Sects. 10 and 11, Chap. 179 of 1908, and Chap. 540 of 1910) of all judges except the Supreme Court.

Your committee has taken no action in regard to this matter but reports it for the information of the bar.

Civil Practice and Procedure.

S. 172. To provide for inquests in cases of death caused by industrial accidents or by the operation of automobiles.

S. 332. That no person shall serve as an auditor in the same court more than once in each year.

S. 360. To repeal Chapter 350 of 1904 in so far as it relates to fees for alias executions and reënact the 10th line of Sect. 2 and the 22d line of Sect. 6 of R.L., Chap. 204.

S. 363. That divorce cases be transferred from the Superior Court to the Probate Court.

H. 366. To strike out the right to interrogate municipal corporations in civil actions.

H. 369. To extend the "Dubuque" law (R.L. 189, Sect. 27) to the collection of attorneys' fees. See also as to this law H. 1613.

H. 370. To permit five-sixths of any jury in civil actions to render a verdict after twelve hours' deliberation.

Opposed.

H. 372. That judges of municipal and district courts shall decide cases within thirty days after final hearing.

H. 502. To prevent the disclosure of professional information by physicians and nurses.

H. 211 and 512. That attorneys who are members of the legislature shall not be required to go to trial while the legislative branch of which they are members is in session.

H. 657. That "it shall be lawful for an attorney to make a contract with a client whereby his fee shall be contingent upon the successful prosecution of suit or the securing of a certain settlement."

H. 663. To authorize the taking of affirmations instead of oaths.

> SECTION 1. Hereafter, in all proceedings in this commonwealth wherein by law the oath is required to be taken or administered, the affirmation may be taken or administered instead of the oath and shall have the same effect and consequences.
>
> SECT. 2. All acts or parts of acts inconsistent herewith are hereby repealed.

[NOTE. This bill was introduced by Quakers in this state for the reason stated in an historical study of "Oaths in Judicial Proceedings and their Effect upon the Competency of Witnesses," by Thomas Raeburn White of the Philadelphia bar, in Am. Law. Reg. for July, 1903, as follows: "There is a large class of persons who not only have conscientious scruples against swearing, but also against administering oaths. This is particularly true of the Society of Friends. As a matter of fact Friends who maintain their standing in their society are to-day excluded from holding the offices of judge, magistrate, or any other office as a part of the duties of which they may be called upon to administer oaths. . . . If William Penn, the great founder of Pennsylvania, were alive to-day, it would

be impossible for him to hold the office of judge or magistrate."]

H. 1149. That —

"The parties to a written contract may agree therein that any addition thereto, or modification thereof, shall be in writing and signed by the parties, and in such case an agreement for any addition thereto, or modification thereof, not in writing and signed by the parties shall be void."

H. 658. That "the measure and mode of conpensation of attorneys and counsellors shall be left to the agreement expressed or implied of the parties."

H. 991. To amend R.L. 181, Sect. 2, as to summary process by adding at the end the words "and the writ shall be served not less than three nor more than sixty days before the return day."

H. 987. That no attachment of personal property shall be made without a hearing granted to all parties involved excepting contract cases where defendant is a non-resident, or when action is based on fraud or defendant about to leave the state or take his property out of the state to defraud his creditors, and in such cases an affidavit shall accompany the writ.

For other bills relating to attachments, trustee process, and arrest see H. 1142, 1143, 1615 and Sect. 192.

H. 998. To amend R.L. 167, Sect. 41, by adding "an officer, in making return on writs of attachment and summons shall not be required to make a return of attachment unless an actual attachment of property is made."

H. 1126. To transfer the original jurisdiction and the jurisdiction of probate appeals on the facts from the Supreme Judicial Court to the Superior Court.

H. 1127. To authorize a tender of money on a claim for unliquidated damages.

H. 1133. To provide for the appointment by the Superior Court by general order of a special master to hear ex parte matters at law and in equity.

H. 1152. To extend R.L. 165, Sect. 55, to Probate Courts.

H. 1153. To authorize the Probate Court to award compensation to special masters and others by extending R.L. 165, Sect. 54, to Probate Courts.

H. 1458. That in appealed cases the Superior Court may allow an amendment to the writ increasing the ad damnum to an amount beyond the jurisdiction of the court from which the appeal was taken.

H. 1614. To prevent ex parte orders in civil proceedings.

H. 1623. To allow constables who have given $3,000 bonds to serve "any writ or other process" within his district as provided in R.L. 181, Chap. 25.

H. 1775. For the appointment of a Public Accident Commissioner to supervise settlements made out of court by public service corporations for personal injuries.

H. 1779. To require courts to make rules requiring verification by affidavit of matter of claim and defence set out in pleadings in personal actions.

H. 1784. To allow the president or treasurer of any unincorporated association of seven or more persons to sue on behalf of the association.

H. 1963. For the appointment by boards of aldermen, city councils or selectmen of towns of 10,000 or more of three physicians "to be known as commitment officers of the insane, whose duty shall be to pass upon the mental condition of all those who may be complained of."

H. 394. That a Master of Trial Lists for the County of Suffolk be appointed at a salary of $3,000.

H. 1633. That taxable costs shall include all reasonable

and necessary expenses, and that a reasonable sum not less than $10 nor more than $100 for counsel fees may be allowed by the Court, and that term fees and other arbitrary fees be abolished.

H. 653. Relative to costs in civil actions. (This bill passed the House but was rejected in the Senate):

> SECTION 1. Section twenty-four of chapter two hundred and three of the Revised Laws is hereby amended by striking out said section and inserting in place thereof the following: — *Section 24.* There shall be allowed as costs in a civil action in the supreme judicial court or the superior court, in addition to other disbursements allowed by law, an entry fee of three dollars.
>
> SECT. 2. Section twenty-seven of chapter two hundred and three of the Revised Laws is hereby amended by striking out said section and inserting in place thereof the following: — *Section 27.* There shall be allowed as costs in a civil action in a police, district or municipal court or before a trial justice, in addition to other disbursements allowed by law, an entry fee of one dollar.
>
> SECT. 3. Section twenty-eight of chapter two hundred and three of the Revised Laws is hereby amended by striking out said section and inserting in place thereof the following: — *Section 28.* There shall be allowed as costs to a trustee or an adverse claimant in an action by the trustee process in a police, district or municipal court or before a trial justice, in addition to the other disbursements allowed by law, such costs as the court may allow.
>
> SECT. 4. Section thirty of chapter two hundred and three of the Revised Laws is hereby repealed.

H. 1129. To limit the right to draw writs and other legal papers for profit to members of the bar under criminal penalty.

H. 1287. To amend R.L., Chap. 152, Sect. 25, by

allowing "a next friend in behalf of the children after notice to both parents" to petition for revision or alteration of a decree as to care, custody or maintenance of children in divorce cases.

H. 630. That —

> "An attorney of record who is actually engaged in the trial of a cause before an auditor who has been appointed by the supreme judicial court, the superior court, or the land court, or an auditor, when actually engaged in the hearing of a cause referred to him, shall not be required to proceed to the trial of any other cause in any of said courts."

H 1450. Relative to poor debtors.

S. 324. That —

> "No case on trial before a jury shall be taken from the jury, continued or delayed, nor shall any verdict be set aside by the trial court for the reason that it has been brought to the attention of the court or jury that the defendant is insured by a policy in a liability or casualty insurance company, or that some other person or corporation is liable over to the defendant for the whole or any part of the judgment which may be rendered against him in the action."

S. 333. To regulate and control legislative counsel and agents.

H. 1611. That —

> "The court shall, upon petition of a party in interest, in actions of tort for negligence, compel the adverse party to the action to disclose the names of witnesses and their addresses upon such terms and conditions as the court may deem expedient, in cases where the names of witnesses are in the exclusive possession of one party to the action."

[NOTE. As to this sort of thing see discussion in last year's report (Mass. B. A. Rep., Vol. IV., pp. 106–108).]

H. 631. That —

"It shall be the duty of every person or corporation procuring a statement, verbal or otherwise, from any person who is concerned in any accident or who was a witness of any accident causing death or injury to any person to reduce the same to writing, if it is not already in writing, and to give a copy thereof to the person making the statement and to the person injured or his legal representative."

H. 1950. That —

"The plaintiff in an action of tort for negligence shall be deemed to have established a prima facie case when he has shown that the defendant was negligent. Absence of due care on the part of the plaintiff shall not preclude him from recovery."

H. 827. That —

"Whenever in a trial in the supreme court or the superior court the judge sets aside a verdict on the ground that the damages found by the jury are excessive, or whenever he declares his intention to set aside a verdict unless the plaintiff consents to a reduction of the damages, it shall be his duty to state in writing the reasons for his action, and the statement shall be made a part of the record of the case."

H. 1774. That when a city or town is liable for an injury because of negligence of some third party who is also liable, the third party shall be joined as a defendant and in case of judgment against all it shall first be enforced against the third party.

The Recommendations of the Board of Prison Commissioners.

H. 1065. To amend R.L., Chap. 207, Sect. 2, so that murder in the second degree shall be punished by imprison-

ment for life "or for any term of years not less than twenty."

As to this the Commissioners say in their report, H. 1064:

> "Murder in the second degree is now punishable by imprisonment for life in every case, and we believe that there are cases of murder in the second degree in which the court should have some discretion, and we therefore suggest that for that offence the court be empowered to sentence the defendant to imprisonment for life, or for any term of years not less than twenty, which is the maximum term for manslaughter."

H. 1066. This was a bill submitted by the Commissioners to carry out their recommendation "that the principle of the indeterminate sentence, so-called, be applied to all commitments for felony excepting for murder and treason."

[NOTE. In connection with this recommendation see table of statistics, and article entitled "Randall after Chronic Jail-birds" in "Boston Transcript" for Sept. 26, 1914, Part III., Magazine Editorial Section, p. 16.]

H. 1067, 1068 and 1069. These were bills submitted by the Commissioners to carry out the following recommendations in their report:

> "So many prisoners who plead guilty in court later represent that they were coerced into doing so, or induced thereto, by representations of various kinds coming from divers persons or sources, while in fact they were not guilty, that we feel that all persons placed on trial for felony should (if desired by them) have legal counsel in the conduct of their defence, or in the presentation to the court of their interests; and that the mittimus of a person pleading guilty to felony should be accompanied by a writing containing, among other things, his statement to the court of facts clearly indicating his guilt, and that when he declines to make such a statement his plea of guilt should not be accepted, and he should be duly placed on trial.

We find that persons charged with felony, who fully and willingly admit their guilt, and who are prepared without delay to accept the judgment and sentence of the court, are nevertheless held in jail to await the action of the grand jury, and are not put on trial until an indictment is returned against them. We regard this practice as expensive, injurious and antiquated, and hope that the better way, which is employed in some of the states, may be brought about in Massachusetts without any more delay than is necessary to a compliance with legal requirements."

[NOTE. All of the bills above referred to formed part of a general plan the substance of which was that when a man charged with felony less than the most serious crimes was ready to plead guilty and take his punishment after being advised by counsel and was ready to satisfy the Court by a statement of facts why he was guilty, the Court should pass judgment and dispose of the case forthwith, instead of the man being kept in jail to await the formality of an indictment and subsequent trial.]

Other Bills as to Criminal Practice and Procedure.

H. 1948. On petition of John A. Aiken that —

"The court may, where a person, in the opinion of the court, under the age of sixteen is called as a witness in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, direct that all or any persons, not being members or officers of the court or parties to the case, their counsel, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of the child or young person: *provided*, that nothing in this section shall authorize the exclusion of bona fide representatives of a newspaper or news agency."

S. 335. To exclude the period of concealment of a crime from the 6-year statute of limitation on indictments for crimes other than murder.

H. 374. That persons from whom property has been stolen may recover from the county forfeited bail money received by it.

H. 516. To give "the injured party" the right to move the Court to place criminal cases on the trial lists of the Superior Court as well as the district attorney and the defendant.

H. 820. That the penalty for rape shall be not less than ten years.

H. 841. That murderers shall not inherit from, or take under the will of, the murdered person, but the murderer's claims shall be distributed among "the other heirs of such deceased person."

H. 1292. To provide for the release of minors under twenty arrested or summoned for misdemeanor if the minor has not been arrested before and the offence is not a serious one.

H. 1295. That when a person arrested for an offence is held awaiting trial for more than three weeks and is afterward convicted and sentenced his term shall begin to run from time when he was first confined.

H. 1548. That a district attorney on petition of a person convicted of misdemeanor may with approval of Superior Court release such person after he has served one-half of his sentence.

H. 1625. That no person who is surety on five bail bonds, other than an authorized surety company, shall for compensation offer or become surety on another bail bond while the first five are in force.

H. 1781. To authorize judges to revoke or modify sentences.

H. 1780. That in all cases of conviction of second or third or succeeding offences of misdemeanors the penalty shall be fine or imprisonment or both.

H. 1904. To authorize the compensation of persons not indicted who have been held in jail.

H. 1945. To provide for appointment of a commission to investigate the criminal laws and procedures and consider the expediency of revising the judicial system of our criminal courts with a view to obtaining reformation of criminals.

H. 1946. That —

> "No judge of a police, district or municipal court, and no justice of the superior court shall sentence any person for confinement in any prison, reformatory, house of correction, or any other institution for a period of more than thirty days unless he shall have, within the twelve months preceding such sentence, visited the institution to which commitment is to be made, and shall have, within said period of twelve months, inspected the condition of such institution and shall have examined the system of discipline maintained in such institution."

H. 504. That —

> "In criminal cases before the superior court, the district attorney, if in his opinion there is not sufficient evidence warranting a trial in any particular case, shall not make an entry of nolle prosequi without the consent in writing of the injured party or parties, but shall without unnecessary delay submit the case to a justice sitting in the superior criminal court, who shall determine, after hearing both parties in chambers, whether such case shall be tried."

H. 225. That appeals under Sect. 7 of Chap. 563 of 1913 (relative to illegitimate children) shall not vacate the judgment order or adjudication.

H. 1471. That persons authorized to issue complaints

and warrants of arrest shall not receive fees for admitting to bail.

Organization of Courts.

S. 329. That the number of Supreme Court justices should be 9 instead of 7.

S. 328. For the appointment of justices of the Superior Court as temporary justices of the Supreme Court.

S. 331. To establish a court of domestic relations.

S. 85. To create a court of masters in chancery.

H. 573. To establish the police court of Southbridge.

H. 503. To establish a municipal court in the Mattapan district of Boston.

H. 656. To create small debtors courts in Boston and other cities with jurisdiction of claims not exceeding $20, when the plaintiff cannot employ a lawyer.

H. 1131. To establish the Second District Court of Northern Worcester to be held at Athol.

H. 1140. To abolish the First District Court of Essex and create a new court to include Salem, Beverly, and neighboring towns.

H. 1141. That Peabody, Lynnfield, and Manchester be annexed to the jurisdiction of the First District Court of Essex.

H. 1610. To establish a new municipal court in Worcester.

H. 1162. To establish the police court of Everett.

H. 1953. To establish a juvenile court for Worcester and adjoining towns.

H. 1293. To extend the jurisdiction of the Municipal Court of the City of Boston.

H. 1445. Relative to the Boston Juvenile Court.

[NOTE. As to these last two bills see last year's report (Mass. B. A. Rep., Vol. IV., p. 90).]

Probate Law, Real Estate, and Conveyancing.

S. 37. That the probate court may after notice allow partial distribution of estates of deceased persons and relieve the executor or administrator of subsequent liability for payments so ordered.

S. 176. That no one except attorneys in good standing shall represent, or advise or draw papers for another person in the probate courts.

S. 357. That executors, administrators, guardians, and trustees be required to account to the Probate Court every six months.

H. 224. That —

> "If in any will drawn by a member of the bar there is a provision by which the person who drew the will or any person associated in business with him or any member of his family would profit, the same shall be prima facie evidence that fraud or undue influence was exercised by the person who drew the will, or by some other person in relation to the said provision."

S. 59. To require the insertion of the grantee's mailing address in deeds, mortgages, and other conveyances.

S. 359. To impose additional taxes on estates of decedents who have not made returns to the assessors prior to their deaths.

H. 208. To provide for the registration of persons employed to act as counsel, broker or agent, to promote or oppose, directly or indirectly, the selection or taking of lands for public purpose or use.

H. 379. To provide for the annulment of rights of way by the Superior Court on application of the servient owner.

H. 634. That any broker or owner selling real estate shall make a sworn return to the register of deeds of the terms of transfer and the true consideration received by the

owner of record, the information to be confidential, *except* that they shall furnish it to the tax commissioner and boards of assessors.

H. 650. To make seals unnecessary.

[NOTE. This committee advised against legislation on this subject in last year's report for reasons therein stated (see Mass. Bar Assoc., Vol. IV., p. 93).]

H. 982, and see H. 368 and 823. To make unpaid water rates liens on real estate bearing 6 per cent. interest.

H. 1457. To prevent evictions from tenements between November 1 and March 31 if the tenant had paid all rent due from him for the nine months ending the preceding October 1.

H. 1699. That the legal residence of a person for the purpose of taxation shall be the city or town in which he has actually resided during the greater portion of six months next preceding the first of April.

H. 1785. To require voluntary associations under written instruments to file annual certificates of condition.

H. 1954. That whoever forecloses a mortgage with intent of wiping out an attachment lien or other subsequent encumbrance and then directly or indirectly turns the property over to the existing owner, his agent or employee shall be guilty of misdemeanor and subject to fine or imprisonment.

H. 1288. Relative to the powers of judges of probate over the marriage of minors. To amend R.L., Chap. 151, Sect. 20, by striking out the whole and inserting the following:

> "SECTION 20. The judge of probate for the county in which a minor under the age specified in the preceding section resides, after issuing a notice to the state board of health and an agent thereof has made inquiry regarding the health, criminal record if any,

and circumstances of the contracting parties, and reported the result of his enquiry to said judge of probate, may, after a hearing, make an order allowing the marriage of such minor, if the father of such minor or, if he is not living, the mother or, if neither parent is alive and resident in this commonwealth, a legal guardian duly appointed has consented to such order: *provided*, that no such order shall be made allowing the marriage of any male under the age of sixteen years or any female under the age of fourteen years. Said judge of probate may also after a hearing make such order in the case of a person whose age is alleged to exceed that specified in the preceding section, but who is unable to produce an official record of birth, whereby the reasonable doubt of the clerk or registrar, as exercised under the provisions of section twenty-eight, may be removed. Upon the receipt of a certified copy of such order by the clerk or registrar of the city or town in which such minor resides, he shall receive the notice required by law and issue a certificate as in other cases. A marriage of a male under the age of eighteen years or a female under the age of sixteen years without an order of the judge of probate in the county in which such minor resides as required by this act shall be null and void."

Workmen's Compensation.

There were fifteen or twenty bills to amend the compensation law in a great variety of ways.

Miscellaneous.

H. 1130. To limit the authority of the inferior courts to determine the constitutionality of acts of the General Court.

[NOTE. This bill was introduced last year also, and its repeated introduction indicates some misunderstanding of the attitude of the lower courts.

[It is the well established practice of all the lower courts in this state as well as other parts of the country not to pass on the constitutionality of legislation. We have never heard of its being done in this state and there is no occasion whatever for any such legislation as proposed.

[The above seems a sufficient answer to the proposal aside from the question of the constitutionality of the bill.

[For an explanation of the subject see Cooley "Constitutional Law," 7th ed., 230.]

H. 1452. (On petition of the Massachusetts Association of Women Lawyers.) That women shall be eligible to appointment as judges in all courts created by the statutes of this commonwealth.

H. 1289. That every member of the bar shall be examined every ten years.

H. 515. To make all members of the Massachusetts bar justices of the peace and notaries public.

H. 389. That an illegitimate child shall take its father's name and inherit property as if legitimate.

H. 392. That hindering jury service by discharge or threats of discharge or otherwise be punished by fine or imprisonment or both.

H. 1150. To allow persons who have rendered services or incurred necessary expenses for a guardian, trustee, executor, or administrator to petition the Probate Court to determine the value and amount and order the payment out of the estate.

H. 1135. To extend the law relative to damages for death caused by negligence of persons or corporations.

H. 2031. That all powers of the State Board of Conciliation and Arbitration by Chapter 444 of 1913 be vested in local boards of arbitration by amendment of Section 16, Chapter 514 of 1909.

H. 2030. That any member of state and local boards of

arbitration may summon witnesses, administer oaths, and take testimony and compel production of book, papers, etc.

H. 840. That an attorney whose client settles without his knowledge shall have an action against both parties and shall have a lien on money due his client.

H. 1622. Relative to settlement of insolvent estates.

H. 662. Relative to appointment of temporary guardians.

THE ROCKWELL AND CHURCHILL PRESS
BOSTON